

# **An Investigation of the Libertarian Philosophy, Applied to Business Ethics**

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*Dissertation presented for the degree of Master of Philosophy (Applied Ethics)  
in the Faculty of Arts and Social Sciences at  
Stellenbosch University*

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March 2016

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March 2016

Libertarianism, as a broad philosophy and frame of thinking, is concerned with one core concept, that of personal liberty; specifically, the liberty of each person to live according to her own choices, with the caveat that she does not attempt to coerce other people and/or prevent them from freely living according to their own individual choices. This view of human beings, and by extension what constitutes im/moral behaviour, also includes what sorts of role(s) the state is justified in playing in people's lives – when it comes to issues within business ethics, libertarians hold that they should be resolved from within instead of via state-intervention. Libertarianism, as a popular philosophy, has gained more and more traction over the past few years across the world, and especially in the United States, and it could possibly challenge other perspectives on government action in the years to come (Croucher, 2014). The field of business ethics offers us many challenges and issues to confront and possibly solve, and the overall goal of this paper will be to assess whether libertarianism can bring anything useful to solving these issues. This thesis will attempt to examine and understand the libertarian philosophy and where it might lack certain points of justification and to then judge whether those points can be surpassed or whether they are fatal for the perspective itself.

The case for libertarianism, as advocated for by the philosopher Robert Nozick in *Anarchy, State, and Utopia*, will be examined in this paper, with the goal of better understanding this particular school of philosophical thought and then applying libertarian principles to the field of business ethics. Instead of a more traditional shareholder or stakeholder view, I will argue that the libertarian lense brings more to the table to aid us in solving, or at least attempting to solve, some issues within the field of business ethics, such as sustainability. Instead of a pragmatic, whichever-method-works-best approach, I believe that a strong, philosophically principled approach can provide a much stronger basis from which to work. Examining the underlying philosophical foundations of documents such as the third King Report in South Africa through this libertarian perspective will prove to be a contextual and highly-relevant exercise, as we need to make sense of these important documents, and the ideas proposed within them, if we are to successfully navigate the business ethics field, both at home and abroad, and to in turn assist other people in doing the same. In addition to using Nozick's writings, the work of other libertarians will be used to bring different nuances into the discussion. Finally, certain critiques of the libertarian philosophy will be used for the purposes of better examining the philosophy and assessing whether its weaknesses are serious enough to jettison the philosophy instead of advocating in favour of it.

Die libertynse filosofie is gefokus op een sentrale ideë; die van persoonlike vryheid van elke persoon om haar lewe te lei volgens haar eie rasonale oordeël. Hierdie vryheid het die een voorwaarde dat sy nie die vrye keuses van ander mense afdwing nie. Hierdie siening van die mens (dit sluit in wat im/morele gedrag is), sluit ook die verskillende rol(le) wat die staat in mense se lewens kan speel. Wanneer dit kom by kwessies binne besigheids-etiek, dink die libertyn dat mense hulle eie probleme moet oplos, sonder inmenging van die staat. Libertarianisme, as 'n filosofie, het meer en meer momentum oor die afgelope paar jaar in die wêreld, en veral in die Verenigde State van Amerika, ervaar. Dit kan moontlik binnekort ander perspektiewe op die rol van die staat verander (Croucher, 2014). Die gebied van besigheids-etiek bied ons baie uitdagings en kwessies om te konfronteer en hopelik op te los, en die oorhoofse doel van hierdie vraestel sal wees om te bepaal of libertarianisme enigiets nuttig kan bring tot die oplossing van hierdie kwessies. Hierdie tesis sal probeer om die libertynse filosofie te ondersoek en te verstaan, en of daar sekere aspekte die strengste kritiek kan oorleef.

Die saak vir libertarianisme, soos aanbeveel deur die filosoof Robert Nozick in *Anarchy, State and Utopia* sal in hierdie skripsie ondersoek word, met die doel om 'n beter begrip van hierdie spesifieke skool van filosofiese denke te bekom, en daarna die toepassing van hierdie beginsels tot die veld van besigheids-etiek. In plaas van 'n meer tradisionele aandeelhouer of belanghebbendes perspektief, sal ek argumenteer dat die libertynse lens meer na die tafel bring om ons te help in die oplossing, van 'n paar kwessies binne die veld van besigheids-etiek, soos byvoorbeeld volhoubaarheid. In plaas van 'n pragmatiese benadering glo ek dat 'n sterk, filosofiese, sistematiese benadering 'n baie beter basis om van te werk kan voorsien. Die ondersoek na die onderliggende filosofiese ideë van dokumente soos die derde King-verslag in Suid-Afrika, deur middel van hierdie libertynse perspektief, sal 'n konteks-sensitiewe en hoogs-relevante oefening wees, aangesien ons moet sin maak van hierdie belangrike dokumente as ons suksesvol wil wees in die veld van besigheids-etiek, in Suid-Afrika sowel as die buiteland, en op sy beurt om ander mense te help om dieselfde te doen. Benewens die gebruik van Nozick se boek sal die werk van ander libertyne gebruik word om verskillende perspektief te betrek. Ten slotte sal kritiek van die libertynse filosofie gebruik word om te verseker dat ons die filosofie beter kan beoordeel en besluit of dit die kritiek kan weerstaan.

## **Contents**

**Introduction** - page 3

**Chapter 1** – page 5

**Chapter 2** – page 32

**Chapter 3** – page 54

**Conclusion** – page 76

**Bibliography** – page 78

## Chapter 1 – Nozick’s libertarianism

### 1. Introduction

The first chapter of this discussion will focus exclusively on Nozick and his work *Anarchy, State and Utopia*. This work forms the basis of Nozick’s own philosophical/political inclinations, and serves as the most appropriate avenue for examining the writings on a subject which is incredibly wide-ranging. In this chapter, I will provide a close reading of Nozick’s work, the possible implications of certain important parts thereof, as well as any auxiliary readings/insights from other writers which I deem will be helpful in understanding Nozick’s argument(s). The chapter will follow the progression in Nozick’s own work, except for parts which I do not think are necessary for the overall purpose, which will be to present as strong a case as possible for the libertarian position in order for us to better judge whether it stands up to the strongest arguments against it. Nozick’s position will also be compared to, and contrasted with, other philosophical positions (e.g. utilitarianism) for the purpose of better drawing out the unique qualities and characteristics of the libertarian position itself. The goal at the end of this chapter will be a thorough understanding of Nozick’s version of the libertarian position, so that we can better apply libertarian principles to issues within the field of business ethics.

### 2. Nozick and Traditional Libertarianism

Nozick’s overall argument is based on the premise that all individuals own themselves.<sup>1</sup> From the principle of self-ownership, Nozick argues that individuals have certain basic *moral* rights<sup>2</sup>, rights which they have in nature i.e. whether they are alone in the world, part of a small village community or a bustling metropolis; a man has these natural rights *qua* man, which means that insofar as he is a man, a certain kind of being, he has these rights – nothing which anyone else says or legislates can negate these natural rights (Nozick, 1974: ix). Importantly, Nozick argues that these rights, along with being natural, are also to be seen as negative. By casting them as negative in type, Nozick is arguing that the only requirement which other people have towards each other insofar as these rights are concerned, is that they are *not* infringed. People are prohibited from interfering with the free actions of other individuals and they are also not obliged to help other people – they are free to assist others in

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<sup>1</sup> This is very similar to Immanuel Kant’s second formulation of the Categorical Imperative: “Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.”

<sup>2</sup> Nozick calls these “Lockean rights,” working from the arguments of the political philosopher, John Locke.

their projects and goals in life, but they do not *have* to do so if they desire to follow a different path or action.

Self-ownership (of oneself and one's own possessions) is fundamentally important to Nozick's overall scheme and argument. If he can successfully argue that each and every person has this right to herself i.e. her body and mind, and by extension to that which she owns, he then has a morally sound foundation from which to argue about such matters as the role of the state, how charitable acts ought to be carried out and other pressing issues. Very early in his work he draws on the work done by John Locke, specifically what this particular philosopher wrote about man as he exists in the 'state of nature,' i.e. how he *is* and what sorts of moral implications we can draw from these observations. As Locke sees it, all people in the state of nature are free to act as they think is best, provided their actions are "within the bounds of the law of nature" (est. 1680: section 4). There is no supernatural or mystical law which dictates how people ought to act; rather, Locke argues that this law is reason. The view that one ought never another person or steal from her is derived from the importance placed upon reason and the view that all people are rational agents (section 6).

Nozick himself does not think that Locke provides "anything remotely resembling a satisfactory explanation" when it comes to explaining some of the more basic premises of self-ownership, but he nonetheless uses what Locke wrote to better illustrate to others that for which he is searching, this being a moral basis for self-ownership (1974: 9). Whereas the role of the state, specifically its moral imperatives regarding the resolution of disputes, is brought into the picture very early by Locke, Nozick writes that:

Only after the full resources of the state of nature are brought into play, namely all those *voluntary* arrangements and agreements persons might reach acting within their rights, and only after the effects of these are estimated, will we be in a position to see how serious are the inconveniences that yet remain to be remedied by the state, and to estimate whether the remedy is worse than the disease (1974: 11, emphasis mine).

From this particular example we can already see Nozick's great suspicion of action(s) undertaken by the state, as he wants to exhaust every other possible avenue of problem and/or conflict resolution *before* he attempts to prescribe how the state ought to act in difficult

situations – this particular point, this scepticism of state action, is a very important feature of libertarianism in general, and we will see it frequently discussed throughout Nozick's work.

Nozick further explains that the main problem with human interactions in the 'state of nature' (the sort of situation in which the state does not exist as such, but groups of individuals do exist) is that people will "overestimate the amount of harm or damage they have suffered" (1974:10). This is say that, as is usually the case in any every day altercation between people where they believe, and stringently argue according to their emotions, that they have been wronged much more than might actually be the case. This in turn means that they will want to "punish others more than proportionately and to exact excessive compensation" (11). Without a central, objective authority i.e. a court administered by the state, Nozick points out that the major concern here is that individuals will simply engage in recurrent retaliatory acts against each other when they have been wronged (or even simply *feel* that they have been wronged), and therefore no disputes will ever truly be resolved<sup>3</sup> (11). The very institution of promising, of honouring one's commitments and judging others as honest/dishonest, will in turn break down, following which society will not function as a whole and rather 'work' as different warring factions. Furthermore it will become very difficult for people to enforce their rights, for example their right to their own property, because those who wrong them might simply be stronger and so they will have no recourse against them – this is far from the sort of morally strong society for which Nozick wants to argue (11-12).

There is a possibility that people can attempt to resolve these disputes by forming groups, and then the groups act on behalf of their 'constituents,' for lack of a better term. Nozick terms these groups "protective associations," and explains that these associations are "mutual-protection" in nature, which means that all individuals in the group will have to stand up in defence of any other individual(s) in the group who are wronged by an outside party (1974: 12). This sort of voluntary arrangement might appear very tempting to those who are inclined to the libertarian side of the argument, but Nozick argues that there are two problems with this arrangement, these being that all the 'members' will always have to be expected to stand up to the defence of one, and the second problem being that any member can demand that all

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<sup>3</sup> This is a particularly strong concern levelled against the libertarian position (and anarchist strains thereof) in general arguments and discussion. Without a strong state, one which is based on strong laws and which sees to the effective management of a system of courts wherein people can bring their disputes and have them resolved objectively, society will simply not function and it will become a situation of stronger groups, or tribes, using force to beat others to fall in line. This is also a concern amongst Objectivists, who are more focused on *what* the state is doing rather than how big it is.



the others help him when he feels that he has been wronged, whether that is actually the case or not (11). Thus we encounter the same problem he raised before, mainly that people will be guided by how they feel in certain situations and will then act according to passions and whim, instead of having their disputes resolved by an objective, morally legitimate, authority such as a court. Finally there is a larger concern voiced by Nozick that one bigger, stronger association will eventually emerge, which will then enforce the protection of its members by overriding those which are smaller (1974: 16-7). In discussing the possibility of a singular, stronger association arising, Nozick draws out similarities to exactly the sort of the state which does exist, which has the power to resolve disputes either through mediation or force, and which acts as the central foundation of society, in effect. Indeed, Nozick's main goal in raising this particular point is that he wishes to investigate how exactly people will be able to counter such an all-powerful agency (such as the state) if only that agency exists and they wish to change matters. There are a number of pathways they could pursue, but Nozick's biggest takeaway point is that, unlike the case with a large, centralized state, an agency which is violent towards others can be dissolved by those of whom it is composed, because they voluntarily agreed to join together in the first place – it is their prerogative whether they want to continue on this path or not (17). However, this perspective assumes that people will continue to act morally, and given the sort of power and wealth they would be giving up if they disbanded the agency, this is a very difficult argument to make. Nozick is arguing that, once a state is established and entrenched, it can be very difficult to do away with when it starts to abuse its power, as opposed to an agency which is made up of voluntary, rational adults.

Nozick allows some minimal room for the possibility that this 'dominant' agency ought not to be considered the same sort of thing as the state, specifically because the state is traditionally considered as defined by its monopoly on the use of force in a society, and it has this monopoly precisely because it is the state – it had the monopoly, it possesses it now and will do so in the future (1974: 22-3). The agency, on the other hand, has to possibly face other competing agencies and it can always be disbanded by its members. Also people who live in a society with a central state, as minimal as it might be, are all at the very least afforded the protection of the state; in other words, the state provides protection for all within the borders, even if not every single person pays for that protection (23-25). For the state to be considered such, and to truly have a monopoly on force, it has the ability to act when force is levelled against anyone in the society; the dominant agency, on the other hand, may only

protect those of whom it is composed, and also there may be times when it is limited in its scope of action because of its limited size (it may be the dominant agency, but this does not guarantee that it can act in every single instance and protect all individuals within and around it.) Nozick believes that there is still more to be said on this specific issue, but an important point from this particular discussion is that he sees the state as having a very tough task in proving its moral legitimacy. This is why, I believe, he gives much time to the idea of freely composed agencies and whether, in an anarchist world, they could possibly have much more legitimacy than the state ever could.

### **3. The Minimal State**

In chapter 3 of *Anarchy, State and Utopia*, Nozick does what I hold to be some of his most important work throughout the entire book, because here we see serious discussion of the moral underpinnings of the state; from analysing what he says in this particular chapter we can better understand his arguments against, for example, taxation and how businesses ought to conduct themselves. He starts the chapter by arguing that what he terms the “night-watchman state,” or minimal state as many would know it, is redistributive in nature, because it forces people to pay for the protection of all in society through taxes, even if they do not want to do so (1974: 26). For this state to function as such, to be able to protect those within against violence, fraud and other transgressions, it must have the monopoly on force and it can only carry out this purpose when it is sufficiently funded (27). The minimal state’s powers are limited to the following: protecting the citizens against violence, theft and fraud. Nozick is not an anarchist philosopher and the purpose of attempting to justify the minimal state is to refute the charge of anarchism that any form of the state is immoral and unjustified. To phrase it shortly, before we investigate in more detail, the justification of the minimal state comes from the belief that it would arise naturally between people in the state of nature that their transactions would be voluntarily and would not involve the violation of individual rights (26).

The issue of redistribution (taxes are demanded and then redistributed to others by way of the state using them to fund protection for all, even those who cannot pay taxes for whichever reason), is a great concern to libertarians in general, and Nozick views it as a central problem for any state, minimal or not, to overcome if it is to have any sort of moral legitimacy in his eyes. Nozick writes that:

Since the night-watchman state *appears* redistributive to the extent that it compels some people to pay for the protection of others, its proponents must explain why this redistributive function of the state is unique. If some redistribution is legitimate in order to protect everyone, why is redistribution not legitimate for other attractive and desirable purposes as well? (27, emphasis mine).

I emphasised the word ‘appears’ specifically because Nozick himself points out that he is focusing on the fact that the minimal state appears to be redistributive precisely because we think that it so, whereas the actual reasons, or justifications, for this state might turn out not be redistributive.

Concerning the matter of the minimal state and libertarianism, libertarians see individuals as important in and of themselves, as not being resources that can be used to maximise the good of others (of society) (1974: 33). This means that projects undertaken by the state, for example defence of people’s right within the particular society, is to be seen as a good in and of itself – each person has these rights. On the other hand, a ‘good’ or goal such as adequate housing for all is not seen as moral, because someone will have to pay for it – if they do so voluntarily (much like the voluntary associations discussed earlier), it is acceptable. Otherwise, they state may not sacrifice their goods and/or resources for the project, however noble it might be. On this particular point, Nozick strongly argues that each person’s life has moral worth in and of itself, that there is no ‘greater’ end of society to which we can sacrifice any individual or group of individuals: “there is no moral outweighing of one of our lives by others so as to lead to a greater overall *social* good. There is no justified sacrifice of some of us for others” (33). Nozick believes that this view of non-sacrifice of individuals for any sort of ‘greater’ goal leads us to the well-established libertarian position of not transgressing the rights of other individuals – of respecting them as ends in and of themselves. Nozick refers to the “nonaggression principle” on p. 34, specifically as it applies to individuals in society and to nations at large, but he does not go into any serious depth regarding this principle, which is surprising at this early stage, as I hold it to be a central feature of the libertarian position, one which ought to be explored more and not just mentioned and then put aside. Nozick mentions that this principle does not prohibit one from defending oneself, against an active or potential threat from another person, but he does not give it as much attention as one would like.

Nozick returns to the matter of voluntary protective agencies vs. the state from p. 51. We see the clearest formulation of the anarchist argument against the very existence of the state itself, as Nozick writes that the anarchist “holds that when the state monopolizes the use of force in a territory and punishes others who violate its monopoly, and when the state provides protection for everyone by forcing some to purchase protection for others, it violates moral side constraints on how individuals may be treated. Hence, he concludes, the state itself is intrinsically immoral (1974: 51). Furthermore, “when the state threatens someone with punishment if he does not contribute to the protection of another, it violates (and its officials violate) his rights. In threatening him with something that would be a violation of his rights if done by a private citizen, they violate moral constraints” (52). Nozick argues that the moral legitimacy of a minimal (or what he terms “ultraminimal”) state can be proven, if he can show that such a state arises “out of the system of private protective associations” and that the ultraminimal state then evolves into the minimal state. Crucially, these developments have to be shown to each be morally legitimate in and of themselves. Nozick then proceeds to attempt to justify the development, and existence, of the minimal state.

There is a central question which is Nozick’s focus for much of the rest of the work, at least concerning this pressing matter of voluntary agency vs. the state: “Are others forbidden to perform actions that transgress the boundary or encroach upon the circumscribed area, or are they permitted to perform such actions provided that they compensate the person whose boundary has been crossed?” (1974: 56). A few questions arise when one reads this question, the biggest of which is this: what constitutes adequate compensation? Is it to be defined monetarily, or is there some sort of emotional compensation which enters the picture? Also, keeping in mind the broader context of what Nozick is discussing, when the ‘other’ becomes the state, can the same sort of compensation ‘scheme’ apply, or do we need something else entirely to justify state action which infringes upon the ‘boundary’ of the rights of the individual. In examining the logical structure and implications of this question, Nozick comes to the following conclusion:

A person may choose to do himself, I shall suppose, the things that would impinge across his boundaries when done without his consent by another. ... Also, he may give another permission to do these things to him (including things impossible for him to do to himself). Voluntary consent opens the border for crossings (1974: 58).

This is to say that, as long as the person is able to freely choose what she wants to (and what she wants to have done to her), Nozick would accept that the person then also has to deal with the consequences of her choice. If, all things considered, people are able to judge what they want to do, whether they will be violating the rights of others, and whether their own rights will be violated in the process (and they consent to this happening), Nozick holds that they are acting morally and should be allowed to do so. When it comes to the issue of the minimal state, the implication of Nozick's argument is that, when agreeing to form such a state, people who form the voluntary agencies are fully aware of what they are doing and what they will be gaining (and surrendering) if they proceed.

### 3.1. The principle of fairness

The "principle of fairness" appears to be one of the weakest pillars of the minimal state, at least as far as Nozick is concerned. This principle "holds that when a number of persons engage in a just, mutually advantageous, cooperative venture according to rules and thus restrain their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefitted who have benefitted from their submission." (1974: 90). The principle implies that the minimal state is indeed fair because it is composed of those who voluntarily agreed to form it, and those who were born after the fact have benefitted from the fact that the 'originals' surrendered some of their liberty in order to ensure a just society in which relationships, interactions and trade can be more advantageous to all involved than might have been the case in an anarchist world. However, Nozick argues that the very enforcement of this principle is a problem, because one person (to say nothing of a group, which would be the case in a society) "cannot, whatever one's purposes, just act so as to give people benefits and then demand (or seize) payment. Nor can a group of persons do this" (1974: 95). The most crucial thought in this passage is this: "If you may not charge and collect for benefits you bestow without prior agreement, you certainly may not do so for benefits whose bestowal costs you nothing, and most certainly people need not repay you for costless-to-provide benefits which yet *others* provided them"<sup>4</sup> (1974: 95). Consider an example from the economic sphere, in which a business makes  $x$  amount of bread, gives it to people on the side

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<sup>4</sup> Also: "So the fact that we partially are "social products" in that we benefit from current patterns and forms created by the multitudinous actions of a long string of long-forgotten people, forms which include institutions, ways of doing things, and language (whose social nature may involve our current use depending upon Wittgensteinian matching of the speech of others), does not create in us a general floating debt which the current society can collect and use it at will" (95).

of the road (in different cars, in minibus taxis, walking and cycling, and beggars,) and then the business demands that each person pays for the bread which they were given. Some people might recognise the benefit they have gained and if possible they will pay for it, but others will not even be able to afford it, or they had other intentions for spending their money – for example, paying for an electricity bill or other essential. Whilst people very often make ‘bad’ decisions with their money, the principle remains that they earned the money and have the right to spend it as they see fit.<sup>5</sup> For Nozick this principle, if consistently applied, will result in immoral actions, especially on the scale of the state and society at large. It could be accepted in theory, but when applied on the state level it has to be enforced (those who surrendered some of their liberty when the state was formed have to see that those sacrifices have a good impact and are appreciated by those who have come after them.)

Nozick explores in much more detail the sorts of actions which the dominant protective agency may undertake, specifically towards individuals who are not part of the particular agency (the purpose of this is to compare such an agency to the state, to judge whether such a state can indeed be justified) (1974: 101). Whilst the agency may protect the individuals within from transgressions against them, Nozick asks whether it may commit to punishing those who transgress against individuals within it even before those actions have been carried out – indeed, the actions might be beneficial and those individuals might have agreed to them in the first place. To answer the question Nozick begins, as always when asking these sorts of questions, by placing the individual in this sort of scenario. “To say that an individual may punish anyone who applied to him a procedure of justice that has not met his approval would be to say that a criminal who refuses to approve anyone’s procedure of justice could legitimately punish anyone who attempted to punish him” (101). The criminal, when she breaks the law, is subject to the penalty incurred by the breaking of the law, a law which everyone agrees upon and which everyone acknowledges as such. She may not claim ignorance or anything of that sort (provided she is a legal adult) and the court will have to treat each case on its own merits. (This is assuming that we have the sort of state which administers the law and courts as it ought to do.) Nozick’s main point here is that we may not just ignore and/or break laws which we do not like, because they are inconvenient to our own wishes and wants. If breaking the law because we do not agree with it, (not because it is

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<sup>5</sup> This is not something which Nozick explores, but I hold that it is important to note for the larger libertarian and Objectivist views of the individual and what type of role the state ought to play in their lives.

immoral or any other legitimate reason such as that) became commonplace, we would probably live in the sort of anarchist state which Nozick described earlier on.

Nozick continues in this vein by making clear that the protective association is not guaranteed to always act objectively, even though it has the legitimacy to act in this particular manner. He writes that:

It might be thought that a protective association legitimately can do this, for it would not be partial to its clients in this manner. But there is no guarantee of this impartiality. Nor have we seen any way that such a new right might arise from the combining of individuals' preexisting rights. We must conclude that protective associations do not have this right, including the sole dominant one (1974: 101-2).

As rational individuals (of the sort Nozick argues we are) we must have the right to know everything about the procedure(s) which is about to be applied to us, and before we act we should know what the consequences of our particular actions will be (for example, if we break *x* law). This view of the individual places a hefty responsibility on each and every person in society, as each person has to examine the system on her own and judge whether it is indeed fair and just, or not.<sup>6</sup> Nozick argues that, once the individual has examined the system and judged that it is fair, he must submit to it. The principle of self-defence stands, meaning that the individual can still resist the procedures applied to him if, after careful consideration, he still finds that the system is unjust and/or unfair. This is the same whether we are dealing with entrenched state system or the sort of dominant protective agency which we had discussed earlier; in the case of the dominant agency, it has to “publish a list of those procedures it deems fair and reliable (and perhaps of those it deems otherwise” (103). Further on Nozick acknowledges that his argument struggles to convey the importance of procedural rights in this discussion, however he still believes that they form an important part of a larger argument (104).

### 3.2. The Monopoly on Force

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<sup>6</sup> Many advocates of state involvement and strong state action argue that we have to provide universal, free schooling to people precisely because they have to be able to make good, rational decisions for themselves and for society, just as the libertarian believes they ought to do.



The claim that the state has a monopoly on force (and indeed that it *ought* to have this monopoly if it is to truly be a state) is absolutely central to many positions which argue in favour of the need to have a state, especially for conservatives and Objectivists. Now whereas the state, in order to be the *state*, claims this monopoly on the use of force, the dominant agency in Nozick's picture does not claim the monopoly as such, but it nonetheless enjoys exactly that position. The dominant claims the right to protect the interests of those who fall within its umbrella, but not to necessarily act against others who do not obey and recognise its own rules and systems. Whilst the dominant agency does not explicitly claim this right to the monopoly on the use of force, Nozick explains that the very nature of this right "is such that once a dominant power emerges, it alone will actually exercise that right" (1974: 109). Because the right arises and because it is exactly this sort of right to the monopoly to the use of force, it "*includes the right* to stop others from wrongfully exercising the right, and only the dominant power will be able to exercise this right against all others" (109, emphasis mine). Looking at this right from a metaphysical perspective then, it has to be grounded in the more fundamental right which holds that other people and/or agencies have to be stopped from wrongfully (I believe this means objectively in this particular context) exercising a monopoly on the use of force. The dominant agency, because it is dominant, adds serious gravity to its case that it ought to have the monopoly on the use of force – whilst others can attempt to enter the 'market' of security and protection, the dominant agency can claim (and support) the position that it *actually* has the monopoly and therefore its enforcement thereof is justified and fair. Much like a multinational corporation, which is strong in many areas of many economies in different countries, the dominant agency has a massive advantage in its particular 'market.'

A crucial difference between the dominant agency and the state when it comes to the enjoyment of the monopoly on the use of force is that the domain of the agency "does *not* extend to quarrels of nonclients *among themselves*" (1974: 109, emphasis mine). These particular 'nonclients' may find themselves within the 'territory' of the dominant agency, but a geographical fact such as this does not mean that the agency can involve itself in matters between those never signed up for it. However, the option remains there for the agency to do so, if perhaps the parties in question have not resolved their conflict to the best interest of all those who are involved. Whilst the state may be expected to intervene in such cases, Nozick believes that it "could abstain from disputes where all concerned parties chose to opt out of the state's apparatus" (110). We are seeing more and more that people attempt to resolve



disputes between themselves on their own, partly due to legal costs and partly due to the incredible inefficiency of the legal apparatus of the state. It is of course much more difficult for people to opt out of the system(s) of the state, but Nozick holds that even the state should allow this particular option to its citizens. The implications of doing so, while still paying taxes and using other services offered by the state, may be incredibly difficult to work out, but for Nozick the principle itself has to stand. Suffice to say that the dominant agency, same as the state, at least nominally enjoys the monopoly on the use of force and can enforce this right to resolve disputes which fall within its sphere.

At this stage Nozick has moved from the point that is the protective dominant agency to the point which is the state, or at least the minimal state which he is attempting to justify. He argues that:

A protective agency dominant in a territory does satisfy the two crucial necessary conditions for being a state. It is the only generally effective enforcer of a prohibition on others' using unreliable enforcement procedures (calling them as it sees them), and it oversees these procedures. And the agency protects those nonclients in its territory whom it prohibits from using self-help enforcement procedures on its clients, in their dealings with its clients, even if such protection must be financed (in apparent redistributive fashion) by its clients (1974: 113-4).

Furthermore, the fact that a formalised state arises should not be philosophical cause for concern for someone arguing from the anarchist perspective, specifically because the monopoly on force which the formal state will now enjoy was not imposed by one individual or dominant, forceful group over others in the society. Indeed, this monopoly “grows by an invisible-hand process and *by morally permissible means*, without anyone's rights being violated and without any claims being made to a special right that others do not possess” (114). Lastly, in order to be considered truly fair and equitable, this system has to require “clients of the *de facto* monopoly to pay for the protection of those they prohibit from self-help enforcement against them, far from being immoral, is morally required by the principle of compensation” (114-5).

Bear in the mind that the principle of compensation is Nozick's answer to the anarchist's claim that the state always, and exclusively, deals in redistributive justice. The state, by virtue

of arising and being such a specific type of entity, gains the right to the monopoly on the use of force. Whether this is a satisfactory answer to this particular worry on the part of the anarchist might not necessarily be all that straightforward, because the *actions* of the state will always be undertaken from the type of position which the anarchist simply cannot accept.

#### 4. The Rights of the Individual

Much like Immanuel Kant's argument that we never use other people as a means, and always respect them as individual ends in themselves<sup>7</sup>, so too does Nozick hold that we may never suspend other people's natural rights, for any means or ends we desire – morally, an individual's rights may never be infringed, even if for a cause such as the 'public good' (Kant, 1996). Each human being *qua* human being is to be regarded as autonomous and responsible – suspending her rights for any other sort of purpose means that her autonomy, and by extension her ability to be regarded as responsible, will be violated; it is both immoral and unjust to infringe on her rights. On the other side of this equation, having natural, absolute natural rights does not mean that people are radically free to act as they wish, without respect for anyone else: an individual is free to live as she wishes, free from interference, as long as she does not infringe upon the equal rights of other people in society. Without this respect of individual, natural rights, Nozick holds that people cannot truly pursue their own goals and in turn live fulfilled lives. As G. M. Clever explains, Nozick "considered self-ownership as a base value in itself, informing all of his subsequent political and ethical values" (Clever, 2010).<sup>8</sup>

People's natural rights extend to their personal possessions (goods, money, property); if they acquired them legitimately and fairly (from the perspective of justice), then they are fully entitled to them, and more. (This is known as Nozick's *entitlement theory*.) To phrase this in a manner close to Nozick, if you did not violate anyone else's natural rights in your pursuit of either your happiness or these other possessions, you alone are entitled to them and may use, and dispose of, them as you see fit – there is no other claim, from any other person, on what you possess. You may give your goods to someone else, you may invest the money you have made or you may spend your money on what can be considered 'frivolous' object; the

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<sup>7</sup> Kant, *The Metaphysics of Morals*, 1797.

<sup>8</sup> The writer from whose thesis I quote attempts to refute the basis of the Nozickean concept of self-ownership, by arguing that this concept is not complete in and of itself, but rather derived from another principle and therefore not as fundamental as Nozick argues.

underlying principle remains that, when you have acquired your goods through legitimate means, they are and will remain, yours. This also means that people around you whom might be in a worse position economically or socially have no legitimate moral claim on you – they can ask for assistance and you can help them in any way you see fit, but their asking or being in a weaker position does not impose any sort of obligation upon you and your possessions.

#### 4.1. The Three Principles of Nozick's Entitlement Theory

From a position which can be considered more business ethical in nature, Nozick's argument concerning natural rights and what having such rights means for people and their possessions, consider the example of a mining corporation. Through exploring a certain tract of land, and conducting the necessary legal work to acquire the land and work it, that corporation becomes the owner of the minerals which they mine – as far as they did not bribe anyone or forcibly take the land, from this perspective they are to be seen as the legitimate owners of the minerals they produce from the earth. This is the concern of the first principle of Nozick's entire entitlement theory i.e. *taking possession of abandoned goods or land or making new goods from land or resources which you have legitimately acquired*. For individuals to be truly respected as free and responsible, they must be the sole proprietors of their personal property, and they must always have the respect of the law with regards to their property – here we see the crucial importance of personal property rights for Nozick's entire libertarian framework. Drawing once more from Locke, if someone mixes her labour with that land which she legally owns, she is morally entitled to the produce or product thereof. As far as much of the land used in the world is owned by individuals or governments, we do not necessarily have to be overly concerned with what is usually termed the state of nature – the first principle of Nozick's entitlement theory deals with unowned goods or new pieces of land which have to be used and made productive. The second and third principles will now be explored (1974: 151).

The second principle of Nozick's entitlement theory is focused on the transferring of goods from one individual to another; just as is the case with other ethical theories, if one acquires goods from another through theft, fraud or force, one cannot be considered to be the legitimate owner of said goods. Nozick's argument does not add any other additional insights to this particular matter, and so suffice it to say that the legitimate, lawful transfer of goods from one legal owner to another is justification enough for him. The third principle combines the first

two, in that they cover any and all legitimate (in Nozick's view) gaining of goods or property by individuals. To summarise his view, the following should prove useful:

1. A person who acquires land or goods in accordance with the principle of justice in acquisition is legally and morally entitled to that land or property (or good).
2. A person who acquires land or goods in accordance with the principle of justice in transfer, from one individual legally and morally entitled to that land or goods, is entitled (as above) to that land or goods.
3. No one (individual or body of individuals or government) is legally and/or morally entitled to land or goods except by the application of 1 and/or 2 above.

Therefore, for Nozick, justice in the context of the distribution of goods within a society can exist if and only if all individuals are entitled to the land or goods they possess. One of the major implication of this conclusion is that individuals whom have acquired more than others (through legitimate means) are fully entitled to their goods and should not be blamed for it – if the distribution of goods looks lop-sided from whichever perspective, that does not mean that the society as a whole is unjust. Attempts to make people more 'equal,' from a socio-economic standpoint, will inevitably result in the violation of the natural rights of some well-off individuals, a project which would have no moral worth for a philosopher such as Nozick. If there is any sort of equality of moral worth for Nozick, it is that all individuals have equal natural rights and are equal before the law of the land; however, if matters have been rigged in a certain way and some people gain more through force or fraud, they are not legitimately entitled to those goods and an unjust distribution would exist. For Nozick, the issue always comes down to people's liberty to use their own resources and skills as they see fit – if this process is upset, for any cause whatsoever, the resultant distribution will indeed be immoral and unjust.

In order to better understand the libertarian position, consider its perspective on individual natural rights as being absolute, as opposed to the utilitarian position, which holds that working to bring about the greatest happiness for the greatest number of people is of great moral value, regardless of whether the rights of a minority of people are violated in that process. Instead of liberty being good in and of itself (the libertarian view), the utilitarian sees happiness as good in and of itself, as the ultimate value for human beings to attain. Whereas the libertarian views rights as being grounded in the nature of the individual, John Stuart Mill (the most well-known utilitarian philosopher) argued that rights are grounded in social utility;

to have a right to something means that one has a valid claim on society to protect one in the possession of that something, because if people are not secure in their possessions, the maximal happiness of the greatest number cannot be realised (Mill, 1863). For thinkers such as Mill, a more egalitarian distribution of goods and/or income will lead to greater happiness in society, but this egalitarian move has to be balanced against individual's claims on their own possessions – thus the utilitarian position demands more balancing than the libertarian, which is solely focused on absolute, individual rights, without which there cannot be legitimate freedom or liberty of any sort. The utilitarian argument is that an action is morally justified if it increases the overall happiness in society; the libertarian argument is that an action is morally justified if it is done freely and voluntarily and does not infringe upon the rights of other people.<sup>9</sup>

## 5. Libertarianism Applied

Libertarians such as Nozick do not portend to know *which specific goals* people should pursue in life, what they ought to do or be to be happy, and thus the libertarian philosophy does not include moral predicates as such, at least not insofar as people's personal lives are concerned. This also means that libertarians are strongly against any religious or other foundation of governance, as this means one moral view is imposed over and above others, and the state, depending on its own view of how vociferously it ought to act, could act to enforce the particular preferred view. Libertarians argue that responsible adults in society are free to eat, smoke and do with their bodies as they wish and freely choose, and that they also therefore have to bear the consequences of their free choices. If they make bad decisions, there is absolutely no obligation on other people or indeed the state to help them in their situation – other people may of course freely choose to help, but there is no moral expectation upon the state to *force* them to act. Consider the essential difference(s) between this libertarian position and a theocratic government, for example. The authority of the theocratic state is based upon a particular religious text, which is interpreted and subsequently enforced by authoritative representatives of the religion; everything within the society has to be done from within the moral boundaries of that which stands in the text, and people are told, and believe, that their path to happiness (in the afterlife) is to be found if they adhere to said

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<sup>9</sup> A few test cases will be explored later on, but consider the example of Bernard Madoff, an investment banker who, through fraud and other unethical dealings, amassed a lot of money – he might have possessed all of that wealth, but as he did it through fraud, Nozick would see him as immoral and undeserving of that wealth. How exactly the state ought to go about resolving such a case is to be decided later on, and Nozick does not give us much guidance in this regard – a possibly strong avenue in which to criticise the libertarian position.

moral boundaries and commandments. Those who enforce the text and the commandments thereof believe that it is their moral obligation to ensure that everyone else follows the same commandments, as it is to their own good and ensures that they act morally (their own personal goals might not line-up with these commandments, but personal wishes ought not to enter the picture). The libertarian is strongly opposed to such a type of society, as this seems to be one in which personal liberty (as the libertarian understands it), is severely restricted.

The libertarian position can be useful (insofar as we are searching for a more principled, philosophical criticism of government action) when we look at different government programs, as we attempt to consider their impact(s) on people within the society, whether those people are 'rich' or 'poor.' Right from the start of such an analysis, the libertarian is inclined towards supporting 'smaller' government, which means that the state's role in society should be as limited as possible; essentially, the responsibilities of the state are confined to police (local protection), national defence (an army) and finally the administration of courts of law. All people are equal in front of the law, and the libertarian fights for this sort of equality, but not others which will be discussed later on. Some libertarians argue that the role of the state should be limited because of its inefficiency in a number of key areas, such as social welfare and education – Nozick, whilst agreeing with these sorts of arguments, argues in favour of libertarianism from a *moral* standpoint. A program such as raising the minimum wage, to take an always important and relevant example, is supported because the cost of living rises in certain areas and workers have to be able to pay more for their families and other expenses. However, raising the minimum wage can mean that some small businesses simply cannot afford to pay x number of workers, with the end result being lay-offs in favour of mechanized tools or anything else that can negate the business being forced to spend more on wages; while the in/efficiency of such a program can be argued, the libertarian would not accept it because it entails state interference. This is not to say that there are not areas of the economy in which advantage is taken of workers, but the essential point is that there will always be unforeseen consequences, a larger ripple effect which can affect the worker and his family far away from the politician sitting in parliament in the capital city. Regarding the complexity of human action and human thought, biology and psychology can help us to understand how certain processes work, but there is an incredible variance when it comes to the reasons and motivations which influence the *how* of people's actions; that being said, even if everything were to be understood, the libertarian would be against any imposition by the state in how people freely interact with each other.

As Nozick argues that the right to one's own life extends to the right to one's own property, and the goods which one produces, so his argument stands strongly against any form of redistributive taxation. A flat tax, which is the same for all economic 'classes' in a society, can be defended, but a tax policy which demands more from those who are better-off economically is immoral, because it is a form of theft. This is not to say that there are not those whom may have 'earned' their money through illicit means, but that becomes a matter for the courts to resolve and the person ought to be punished accordingly. For Nozick, a progressive tax takes more from people precisely because they have been more successful, even though the policy is defended as moral and 'fair.' If one's goods and/or money are taken, with the threat of force behind such an action, it become a form of partial slavery because that which one has produced and earned is given away to others who have not done anything to earn it. When one is no longer secure in one's property and goods, and these can be taken at a whim, personal liberty and private property can no longer be said to exist. This means that no one else has any sort of right to what you own – they can ask for assistance and you may freely provide it, if that is the course of action you wish to pursue. However there can be no demand whatsoever on your earned money and goods, as much as other people in society might 'need' it. The principle of self-ownership cannot accommodate such actions of force against the individual, otherwise it is compromised.

It would suffice at this point to investigate whether individual rights are truly as absolute as one might first think when engaging with any sort of libertarian argument.<sup>10</sup> The individual ought to be free to act as she wishes, and her individual rights have to be in place to ensure that she can live in this manner; that she is secure in her person, her property and *how* she chooses to live. However, her rights can only be truly secure if the rights of other individuals is also secure in the eyes of the state – just as others have to respect her individual rights, the exact same expectation and demand is placed on her. Indeed, the rights of the individual are *constraints* upon certain actions, in order to ensure that everyone's individual rights are respected, formally observed and secure (1974: 166). Nozick also makes clear that these rights impose constraints upon how the state may act, if and how much it may interfere and how much it can attempt to influence the social order; on this he writes that individuals exercising their rights "fixes some features of the world." These fixed features then impose

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<sup>10</sup> This will be examined in much more detail in the second chapter under the sub-heading 'Anarchism.'



constraints, within which “a choice may be made by a social choice mechanism based upon on a social-ordering” (166). Thus the social order at hand is not engineered by the protection of individual rights, but rather arises because individual rights are observed, respected and protected, and free choices are made within these constraints.

## 5.1. Libertarianism and egalitarianism

### 5.1.1. Wilt Chamberlain thought experiment

Nozick’s argument against progressive taxation, and indeed any sort of ‘heavy’ taxation, is best described in his Wilt Chamberlain example. Chamberlain is “greatly in demand by basketball teams, being a great game attraction” (Nozick, 1974: 161). Early in the example Nozick establishes the concept of demand: if  $x$  is in high demand, it becomes more and more valuable to those who demand it – it is not in high demand in and of itself, but rather because people who compose the market demand it. Now because Chamberlain is in such high demand, he can dictate the terms of his contract with his new team: “In each home game, twenty-five cents from the price of each ticket of admission goes to him” (161). It might not necessarily work this way if applied to the real world, but in Nozick’s example people are happy to drop the twenty-five cents into a “special box” which has Chamberlain’s name on it – neither the team nor Chamberlain try to hide what they are doing and indeed ensure that people know where each person’s twenty-five cents will go. If one million people pay the twenty-five cents throughout the season, Chamberlain will earn \$250 000 at the end of said season. This amount of \$250 000 is much larger than what any other player earns in one season, perhaps even over multiple seasons. In this particular scenario, each person chose to give the twenty-five cents to Chamberlain to see him play, and they did so voluntarily, knowing full-well where exactly the money was going and why they were being asked to pay it. As Nozick explains (and as other economists such as Milton Friedman and Friedrich Hayek have also made clear), the people could have chosen to spend their money on anything else, be it on “going to the movies, or on candy bars, or on copies of *Dissent* magazine, or of *Monthly Review*” (161). From Nozick’s perspective of what exactly justice is, this sort of scenario is exactly just because each person, who was entitled to use and dispose of their money as they saw fit, chose to voluntarily give it to Wilt Chamberlain throughout the season. This whole process will result in great inequality within the society, at least when it comes to how much more Chamberlain will have than other basketball player and in turn exponentially more than non-basketball players, people who are simply janitors or hot-dog vendors, for example. Nozick asks, “By what process could such a transfer among two



persons give rise to a legitimate claim of distributive justice on a portion of what was transferred, by a third party who had no claim of justice on any holding of the others before the transfer?" (161-2). This means that, for Nozick, the inequality which results from this sort of exchange is just, but he nonetheless asks what types of "considerations" could give one reason to think that this sort of inequality (the result of a voluntary exchange between people) is unjust.

Nozick concludes this example surrounding Wilt Chamberlain by stating:

no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives. Any favored pattern would be transformed into one unfavored by the principle, by people choosing to act in different ways; for example, by people exchanging goods and services with other people, or giving things to other people, things the transferrers are entitled to under the favored distributional pattern (163).

Here Nozick is saying that the natural conduct of human beings, that they trade with one another when they are in groups, that they specialize in certain areas and inevitably find what exactly they want to spend their own money on, will ensure that the planned pattern of distributive justice will always come under pressure and in all probability dissolve. Furthermore, "to maintain a pattern one must either continually interfere to stop people from transferring resources as they wish to, or continually (or periodically) interfere to take from some persons resources that others for some reason chose to transfer to them" (163). Whilst Nozick acknowledges that certain "weak" patterns could be regulated without necessarily comprising the principle of liberty and justice, he nonetheless maintains his standpoint that mixing any sort of egalitarian goal, and then method, into the picture of voluntary actions by individuals, those actions become forced and the moral worth of them is compromised. On this particular point, he writes that any distributional pattern as I have described just above, will inevitably be overridden by "the voluntary actions of individual persons over time; as is every patterned condition with sufficient content so as actually to have been proposed as presenting the central core of distributive justice" (163). Furthermore, he argues that there is a problem with the very make-up of the egalitarian system itself, such that it will eventually succumb to how humans interact with each other regardless of how one forces them to act: "Since the weaker the patterning, the more likely it is that the entitlement system itself

satisfies it, a plausible conjecture is that any patterning either is unstable or is satisfied by the entitlement system” (164).

Those who seek to address the inequality problem from the perspective of egalitarianism judge the gap (which many hold is growing more each year) between the ‘rich’ and the ‘poor’ as probably *the* most serious problem which modern societies and governments have to solve if the global community is to be stable and flourish in the coming decades.<sup>11</sup> There are many different positions on the same side of this argument, all of which want to solve the problem but do not necessarily agree on the means to solving the matter at hand. Different progressive and stronger systems of taxation (which Nozick fundamentally sees as redistributive, taking from one group to give to other groups which are deemed to be in need) are in place all over the world. Whilst they may be noble in intention (if one accepts certain principles of egalitarianism and altruism), these plans inevitably trample on the rights of individuals – these rights, in order to be so in the eyes of the law and justice, have to include the right to be able to choose how one disposes of one’s earned income.

One of the most interesting conclusions from Nozick’s thought experiment is that, if the state truly wants to ensure that unjust inequality never arises, it will have to strenuously regulate the activities of companies, families and individuals. When the state engages in what Nozick terms a “distributional pattern” the pattern, which is another term for system of redistribution, is based upon principles which “do not give the right to choose what to do with what one has; they do not give the right to choose to pursue an end involving the enhancement of another’s position” (167). These principles, when applied to one particular situation, cannot accommodate the traditional familial setup: “within a family occur transfers that upset the favored distributional pattern” (167). Any situation in which the distributional pattern is subverted by way of voluntary interactions will result in the particular pattern being fundamentally changed; instead of the desired distributional outcomes being attained, things will remain unequally distributed across a wide range of contexts. Whilst I am not in agreement with Nozick on a whole number of philosophical principles and conclusions, the following strikes me as true: “Need we say that it is not appropriate to enforce across the wider society the relationships of love and care appropriate within a family, relationships which are *voluntarily* undertaken?” (167, emphasis mine).

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<sup>11</sup> Thomas Piketty argues against this global inequality, which he believes is a central feature of modern capitalism, in his magnum opus *Capital in the Twenty-First Century*, published in 2013.

Where the libertarian focuses on individual rights as absolute, and that the violation of these rights is a violation of justice – the state, through the courts, has to remedy this injustice and ensure that equality in the eyes of the law is properly observed. For those who are concerned with distributive justice, they are focused on the notion of “recipient justice” which means they only consider the demand or need which someone else places upon the goods of property of another person (Nozick, 1974: 168). As Nozick explains, those concerned with distributive justice “completely ignore any right a person might have to give something to someone” (168). Instead of discussing the right of the individual to choose whether she wants to give this particular piece of property or  $x$  amount of money to her family members or anyone else around her, these discussions centre around the perceived rights of those around her who demand  $x$  amount from her. Whilst we may discuss whether those who demand certain things do indeed have rights to these particular things, Nozick wants the matter to be focused on the fact that the producers’ rights, to what they have worked towards and made real, have to be secure. Some individuals will, because of natural talents, work and other situational factors, produce more than others; they do not have to be classified as ‘upper’ and ‘lower’ class, which simply focuses on income, but rather these individuals should be seen as exactly that – individuals. The type of distributional patterns discussed here have to be *redistributional*, because the goods/income of some have to be redistributed in order to ensure that a truly egalitarian system is the result; this sort of system would violate the individual rights of the producers and would therefore be unacceptable to a libertarian such as Nozick. He states clearly that this sort of distributive arrangement violates individual rights: “From the point of view of an entitlement theory, redistribution is a serious matter indeed, involving, as it does, the violation of people’s rights.” (168). However, and here we can find common ground between the libertarian and people who argue from a more progressive standpoint, Nozick acknowledges that instances of previous injustices require the rectification thereof, and this rectification might indeed take the form of redistribution (168).

#### 5.1.2. Taxation as forced labour

The following is a particularly contentious point which Nozick raises during the discussion of systems of distribution. He writes that taxing the earnings of someone i.e. the income they have earned after working for  $x$  amount of time (the type of tax is not specified but we can assume either a flat or progressive system) is “on par with forced labor” (1974: 169). ‘Forced labour’ is best understood as a form of slavery, because the profits of the labour put in are not

kept by the person who produced them. He explains this claim by focusing on the *time* which the person has put into her work; because the work was done by her over  $x$  number of hours, days, weeks etc., she is entitled to what she produced in that particular time frame. Taxing what she has earned over that time is akin to taking the hours she has worked from her, as though she did not actually do any work and the benefits thereof are given to someone else. Nozick does mention that there are people who would support this statement and those who would oppose it, but that those who oppose it would not go so far as to state that those who are unproductive in society (university students, for example) be forced into working for the benefit of others who ‘need’ something (169-170). Forced labour can indeed be judged as a form of slavery, because that which is produced by one person is taken, by force, by another person for her benefit; the property which one person has earned is taken by someone who has not worked for it, a person who falls into a group which is deemed to be more needy than any others. As Nozick judges the situation, force enters the picture of taxation: “The fact that others intentionally intervene, in violation of a side constraint against aggression ... in this case to paying taxes ... makes the taxation system one of forced labor and distinguishes it from other cases of limited choices which are not forcings” (169). The matter at hand can be best understood in terms of the *time* which the taxed person has put into her work, in order to earn an income and to then have the *choice* to purchase what she desires or use that income for other things. On this Nozick writes that the person “who chooses to work longer to gain an income more than sufficient for his basic needs prefers some extra goods or services to the leisure and activities he could perform during possible nonworking hours” (170). The crucial point here is that the voluntary choice of the individual, of her having the natural, rational ability to choose what she wants to do with her time and earned income, is compromised by the use of force brought into the equation whenever any form of taxation is applied to people’s incomes. Nozick provides a number of examples to illustrate this crucial point, but they can all be summarised in the following: “Why should we treat the man whose happiness requires certain material goods or services differently from the man whose preferences and desires make such goods unnecessary for his happiness?” (Nozick, 1974: 170). The person who desires this or that particular material good has to work for it, has to put in the requisite number of hours to earn enough to purchase what he wants, instead of using his time and efforts elsewhere, and Nozick sees no moral difference between this material-focused person and the person who also works but is not taxed because she does not want to increase her material possessions. Our personal views on what people ought to want (i.e. material or non-material goods) aside, Nozick does not believe these should enter the picture when we talk

about taxation. Indeed, the man who wants to own more material goods has to put in extra labour to earn them and so works harder for them than the man who simply does not desire such things and does the amount of work he feels is sufficient for his life (170). The entire discussion comes back to, and in the overall schema revolves around, the matter of individual rights and more specifically the right of the individual to do as she wishes with her own property, within certain moral and legal constraints in society. As Nozick states, these constraints are determined by “other principles or laws operating in the society ... by the Lockean rights people possess” (under the minimal state). His statement is made concrete through the following example: “My property rights in my knife allow me to leave it where I will, but not in your chest. I may *choose* which of the acceptable operations involving the knife is to be realized” (171). The free, rational choice ought to always remain with the individual, but she loses that right if she violates the individual rights of any other person; at the same time, she also loses this choice if she is forced to pay part of her income to serve others who demand to be given  $x$ . On this particular point Nozick writes:

[whether] taxation on wages or on wages over a certain amount, or through seizure of profits, or through there being a big social pot so that it's not clear what's coming from where and what's going where, patterned principles of distributive justice involve appropriating the *actions* of other persons. Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work ... they decide what you are to do and what purposes your work is to serve apart from your decisions (1974: 172, emphasis mine).

Taxation then creates a disjunction between the actual work that you do, the amount of time which you have put into your work and the income you should earn for that, and the actual reward that you do get, because it takes some of that for the purpose of serving others; this is done without your voluntary choice being taken into consideration. Furthermore, you cannot choose where exactly your taxed income goes, you can only surrender it without resisting. Nozick, as a libertarian, shares the classical liberal desire to secure the right of the individual to self-ownership, which stands directly opposed to taxation; the libertarian sees the process of taxation as making some people, those who demand  $x$  from you, as a “part-owner” of you. If we accept the moral premise that the needy have to be given a part of the income which you have worked for and earned, the libertarian holds that this means the needy have the right

to some part of your property. This being said, there might be another part of the pro-taxation argument which Nozick cannot account for – everyone in the society agrees to being taxed if their income reaches a certain point, provided the taxed income is used for purposes seen as moral and legitimate.

## 5.2.Nozick on Rawls' Distributive Justice

Continuing his discussion on the subject of distributive justice, Nozick turns to *A Theory of Justice*, 1971, by the philosopher John Rawls. He acknowledges that Rawls' work is a "fountain of illuminating ideas" and recognises that philosophers of other political inclinations have to either work within Rawls' theory or successfully refute, indicating how important he believes it to be (1974: 183). Examining social cooperation (the notion that people interact with each other based on certain recognised "rules of conduct") and its relation to distributive justice is where Nozick begins this vital part of the discussion (185).

Rawls establishes a system of distributive justice which is based on the notion that 'society' is purely a system of cooperation between individuals; the goal of this cooperation is to be mutually beneficial to both parties. As Rawls explains, the notion of justice in this context is defined as the "appropriate distribution of the benefits and burdens of social co-operation (1971: 4). For Rawls, justice is definitely the most important value in society; it is what society ought to be geared towards attaining and maintain, and therefore all of the institutions in society should be focused on it. In order to establish such a system of proper justice, Rawls believes that people should be free to agree to such principles which advance their own interests regarding interactions of mutual advantage; in other words, justice is also fairness (11). If people would agree to a system where the worst-off would be taken care of by taxing those who are better-off, Rawls argues that such a system of distribution is fair. Rawls also holds that inequalities (e.g. wealth) are moral as long as they exist to the benefit of everyone in society.

Individuals interact freely with each other within the larger framework of larger laws and systems over them in place in society. When people interact and trade with each other, through the usage of public avenues such as roads, the results are varied and incredibly complex; because of this complex coming together of many different people, who bring different amounts to the table and contribute different skills, Nozick states:

one cannot disentangle the contributions of distinct individuals who cooperate; everything is everyone's joint product. On this joint product, or on any portion of it, each person plausibly will make claims of equal strength; all have an equally good claim, or at any rate no person has a distinctly better claim than any other. Somehow ... it must be decided how this total product of joint social cooperation (to which individual entitlements do not apply differentially) is to be divided up; this is the problem of distributive justice (1974: 186).

Each person voluntarily contributed to the production of this joint product, and Nozick acknowledges that each person mixed her labor with that of others, but for him the important point is that it was *her* labor; the end product might have been the result of a great joint effort but every individual did the work on her own, and thus owns whichever part she may have contributed – as Nozick says, “each person is a miniature firm” (Nozick, 1974: 186). In a truly free market type of system, it is easy to identify who produced what, who contributed what etc., or at least so Nozick believes. If everyone is free to partake in the end product, what exactly is the purpose of bringing distributive justice into the picture? Given that there are many different factors to consider in the types of markets we have around us nowadays, there could be a stronger case on the side of distributive justice in *this* particular regard. However, as long as people are able to freely interact with each other, and know what they are working towards and they do so voluntarily, he does not believe there is any claim to bring in distributive justice at all.

Rawls attacks Nozick on the specific point that people's position in society and their natural talents are the result of a morally arbitrary origin i.e. when and to whom they were born, and thus that inequalities which result from this cannot be justified. Nozick responds to this by arguing that people's talents and natural abilities are their own, and that whatever they earn through using therefore belong to them. Bear in mind that any and all wealth or property which is gained through fraudulent or forceful means is not the rightful property of the person who has taken it, and thus Nozick will have to allow for redistribution of at least some form when it comes to correcting historical injustices.

## 6. Conclusion

The intended purpose of this chapter was explained at the beginning: to provide a close reading of Nozick's work *Anarchy, State and Utopia*, in order to better understand the



libertarian position itself. Sufficient support from the text was provided, and the implications of Nozick's libertarian argument(s) have been drawn out and explained. The purpose of providing insights and comments from other writers was to elucidate exactly what Nozick is arguing for, and what the principles of libertarianism can bring to the discussion around business ethics. The chapter followed the progression of Nozick's own arguments in his work, along with choosing the passages which were deemed the most relevant to our discussion here. We are now familiar with the central pillars of the libertarian position, these being the requirement that the rights of the individual are absolute, the need for the security of property rights, conducting one's actions according to the non-aggression principle, a formal rule of law and finally, in the case of Nozick, the establishment and maintenance of a minimal state to, one which is strictly limited to acting against those whom initiate force and protects the citizens from outside aggression. The strongest possible case for libertarianism as a philosophical position has been presented, insofar as it purports to be *the* best position which respects individual rights and individual happiness. Hereafter, the focus will shift to alternatives to the libertarian position, both from those who are completely opposed to it as well as those whom we might place on the same side, but still disagree with libertarians on certain fundamental philosophical aspects. Thereafter I will attempt to apply what we have learned of the libertarian position to certain issues within the sphere of business ethics.



## **Chapter 2 – Critiques of the libertarian philosophical position**

### **1. Introduction**

As has been alluded to in the previous chapter, there are numerous strong philosophical positions which stand in stark contrast to that which libertarians regard as vital for the establishment of a moral and just society. A position such as utilitarianism, to take one consistently strong example, is a school of thought which has gained a lot of traction both in academic circles and society in general (e.g. redistribution of wealth and the establishment of the welfare state), whether people are consciously aware of this or not. In the previous chapter we examined the libertarian position as presented by Robert Nozick in his work *Anarchy, State and Utopia*. There are many weaknesses to the libertarian position which will be analysed and explained in this chapter. When we assess the libertarian's argument(s) from the left side of the political spectrum, the weaknesses are matters such as the lack of formalised welfare on the part of the state, the freedom people have when it comes to concerning issues such as gun control and drug usage, and finally the problem of education, if it isn't the mandate of the state to provide it to the people. The purpose of this chapter is to assess the libertarian position from the perspective of those who are opposed to it – both those who are fundamentally in disagreement with it and those who might share some aspects of the philosophy. The work of utilitarian philosophers such as John Stuart Mill and Peter Singer, anarchist writers such as Murray Rothbard, and Objectivist philosophers such as Craig Biddle and Yaron Brook will all be used to critique the libertarian's position on a

number of key issues, as well as attempting to refute its key pillars. The goal of this chapter is to assess whether libertarianism can stand up to some of its best critics and thereafter whether it can help us answer some of the difficult problems within the field of business ethics.

## 2. Utilitarianism

The utilitarian philosophical position, as first formalised by Jeremy Bentham, gained considerable traction through the writings of John Stuart Mill. As a philosophy, utilitarianism has the foundation that pleasure and happiness are intrinsically valuable goals to obtain, and that pain and suffering are not intrinsically valuable (they are to be avoided as much as possible), and that any other instrumental value has value only in if it causes happiness or preventing suffering (as means to an end). This focus on happiness or pleasure as the ultimate end of moral decisions and actions, means that utilitarianism is a type of hedonism. According to Driver, “utilitarianism is generally held to be the view that the morally right action is the action that produces the most good” (2009). The “relevant consequences” of one’s actions form the overall goal to which one should aim; “On the utilitarian view one ought to maximize the overall good – that is, consider the good of others as well as one’s own good” (2009). Mill especially equated the ‘good’ with pleasure – if you maximize your own and other’s pleasure, the action is deemed good. On the utilitarian view, each person’s happiness “counts the same. When one maximises the good, it is the good *impartially* considered” (2009). Professor Charles Kay provides a more mathematical definition of utilitarianism: “This theory defines morality in terms of the maximization of net expectable utility for all parties affected by a decision or action” (1997). The utilitarian principle itself can best be formulated as follows: “Actions are right to the degree that they tend to promote the greatest good for the greatest number” (1997). Whilst Mill argued for the maximisation of pleasure, he did not see all types of pleasure as equally worthy of pursuit. According to Kay, Mill defined the good “in terms of *well-being* (Aristotle’s *eudaimonia*), and distinguished not just *quantitatively* but also *qualitatively* between various forms of pleasure” (1997). On this picture, intellectual growth and the making of great works of art, are worth more moral good than, for example, reproduction or simply eating any food to gain sustenance.

Regardless of whether it is a higher or lower good, the good is made real in material pleasure which can be maximised. Kay states that utilitarianism “allows for degrees of right and wrong, and for every situation the choice between actions is clear-cut: always choose that which has the greatest utility (1997).

For the utilitarian, utility should not just be used for its own sake but rather insofar as it maximises certain higher order pleasures, both for the individual and people around her. The morality of an action is not exclusively tied to the individual's circumstances and complex environment but rather is linked to what Mill perceives to be the inherent goodness-producing aspects of certain actions. The guiding principle of this philosophy, which undergirds all actions human beings should pursue, is that the greatest happiness for the greatest number of people (and some might argue animals) should always be the overall goal. The best way to assess one's actions, both before and after one has actually done the action, is to look at the possible and actual consequences of that action (this is why utilitarian is consequentialist type of philosophy).

To take a broad view, from the utilitarian perspective, the moral agent (if we consider her to be truly moral) ought to maximise the overall good; this is to say that, whilst she may still be concerned with her own good and try to increase that, she must also increase the good of others in the process – this stands in stark contrast to the Objectivist philosophy of egoism, which is exclusively concerned with the agent maximising her own good. The utilitarian principle can also be described as the Greatest Happiness Principle, which stated as a formula works as follows: action  $x$  maximises happiness (pleasure) = action  $x$  is morally permissible and should be encouraged. Action  $y$  lessens happiness (pleasure) = action  $y$  is not morally permissible and should be discouraged.<sup>12</sup> The amount of happiness generated in society is the main goal of utilitarianism, not necessarily the actual content thereof; we can debate what exactly constitutes 'quality' happiness for the rest of this paper, however that would not serve the purpose of our overall goal.

On the utilitarian view, every single person's pleasure or happiness (depending on the particular utilitarian) 'weighs' the same as everyone else's, which the utilitarian argues is vital for the increasing of moral actions – if everyone's pleasure counts the same, everyone has as much reason as any other to increase the pleasure within society. To take a contrary view, but one which is also fundamentally utilitarian in nature, Peter Singer argues for the minimising of harm(s) being done in society – this extends to the suffering of animals, and informs Singer's arguments in favour of living as vegetarians (1980). On this view, the

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<sup>12</sup> What exactly constitutes happiness (pleasure) has to be further explained by the utilitarian, and might differ from writer to writer. The main names in the field, John Stuart Mill, defined happiness as pleasure (not just base pleasures but intellectual as well).

increase of good in society should not be the exclusive focus of one's actions but rather one ought also to limit the harm one causes to others and society as far as possible; the unit of harm, a form of measurement, should always be as small as possible.

The notion of utility, as Mill understands it, is of great importance in his schema (Mill: 1863, Chapter 2). Mill's view is that we, as a society, can increase the amount of pleasure (happiness) if we assess our actions and act so that, in conjunction with raising our own happiness, we raise the level of happiness of others. One can view Mill's principle that one not increase the harm in society, by not undertaking actions which directly harm others, as a truly libertarian principle. If your actions do not cause harm to other people, you are permitted to undertake them. There can of course be harmful *unintended* consequences of your actions, but you will then be held responsible for those, and you did not act with the express intention of bring harm to anyone in particular or indeed in general. Indeed, on Mill's view, if your actions are not going to increase the amount of harm in society, no outside force can compel you to act otherwise; your actions are morally permissible and encouraged (1863, Chapter 2). This central pillar of the liberal tradition, of not controlling individuals and leaving them to further their own good if they do not harm others in the process, is present in both the utilitarian and libertarian positions, but perhaps gets lost in the great focus on utility in the former position. One example of this strong respect of individual liberty is that Mill consistently argued against any sort of legal discrimination against women by men in society; if women are not free to compete with men on an equal legal basis, their liberty as individuals is being infringed upon and society as a whole will suffer accordingly (1869).

Once the utilitarian premise has been accepted, one has to contend with the difficult matter of how exactly the consequences of one's actions will be judged – if we are to truly focus on maximising our own pleasure as well as that of people in society at large, we are confined to the consequences of our actions; this leaves out the possibility of judging the origins of people's actions, their intentions and motivations. In other words, people are considered moral insofar as their actions produce the maximal good for the maximum amount of people, and not necessarily whether their actions are conducted in a moral/immoral manner.<sup>13</sup> Assessing the intentions of someone's actions as moral/immoral strikes one as a vital part of any discussion surrounding ethics and by extension how the state ought to act, thus it might

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<sup>13</sup> The view that actions are to be judged by their consequences is known as consequentialism.

be difficult to simply focus on consequences. There is another possible problem with this view of assessing an individual's actions in that there is no allowance for people having to make decisions in the moment; for example, something as mundane as buying a chocolate bar or a bunch of apples at the shop becomes a serious philosophical conundrum, and people who have not been 'trained' in philosophy as such simply will not consider all of these moral implications. When we have to make these sorts of everyday decisions we might consider the price of something or if we are trying a different diet, we weigh up some nutritional facts about the food we want to buy, but we don't think about increasing the maximum amount of happiness for the greatest amount of people around us. Indeed, if this sort of philosophy is the best for evaluating the moral worth of one's actions and which values to pursue, a philosopher such as Peter Singer's utilitarianism with its focus on animals and minimising harm to them might come in more handy – we have to buy things on an almost daily basis and pursuing at least some values which aim to alleviate harm or pain can be seen as better than having a grand theory which we have to appeal to in every single instance. Utilitarianism can be useful from a certain perspective and if one has certain necessary facts about how a person's major decisions truly impacted her life over a period of time, but it is the sort of grand philosophical theory which does not make sufficient room for every day particulars about the person's life.

As opposed to the utilitarianism which we have focused on until now, which is based on the acts of people maximising the good for the greatest number, another variant of utilitarianism, namely rule utilitarianism. Rule utilitarianism "claims that an action is right if, and only if, it complies with those rules which, if everybody followed them, would lead to the greatest happiness (compared to any other set of rules)" (Lacewing). The approach focuses on proving a set of rules by which everyone can guide their actions if their ultimate goal is to maximise the happiness of everyone else. The charge from those who argue in favour of this type of utilitarianism is that act utilitarianism becomes muddled with calculations, and it can be difficult to truly figure out if this action or that action produces more happiness. Rule utilitarians focus on working out which rules "create the greatest happiness, but we only need to do this once, and we can do it together" (1). The rule utilitarian argues that act utilitarianism is short-sighted, and that moral rules will guide people to maximise the overall happiness much better over the long term (3).

From the libertarian perspective individual rights are absolute because each individual has to be responsible for her own life; in order to do so, she has to be secure in her property, her person and the actions she can undertake from her own voluntary will. On the other side, the utilitarian argument extends to the suspension of these rights, if the situation demands it; if the utilitarian can show how the greatest amount of pleasure will be the result of his actions, his argument form demands that individual rights which stand in the way ought to be suspended. Therefore we can say that individual rights are not absolute within the utilitarian framework. How does this affect the discussion between libertarianism and utilitarianism? As follows.

If individual rights are embodied and used in such a way as to increase the amount of pleasure or happiness (depending on the utilitarian's specific position) in society, the utilitarian will argue strongly in favour of them and agree with the libertarian on many points. These rights can ensure that each individual lives to the best of her ability and can therefore fulfil her own happiness exactly as she judges 'happiness' to be; neither the libertarian nor the utilitarian will tell people what they content of their 'happiness' ought to be and how they ought to live. Consider the problem of inequality in modern societies, as the gap between those who are richer and poorer becomes wider with time. This matter is a great concern for many people on all sides of the political and philosophical spectrum, and the utilitarian would argue that inequality is, and increases, the amount of harm in the society. Therefore, if inequality can be addressed by the redistribution of the wealth of some, for example, the utilitarian would accept that the individual right to property be curtailed or possibly suspended. I believe that, even if a libertarian would accept the moral arguments behind such redistribution, the force which is inherent to any process of redistribution would not be acceptable.

### **3. Anarchism**

The philosophical position of anarchism was explored from the libertarian perspective in Chapter 1 when we examined Nozick's *Anarchy, State and Utopia*. Whereas libertarianism and other political philosophies accept the existence of the state as part of moral society, anarchists argue in favour of a *stateless* society; this sort of 'society' would be composed of many different voluntary associations and groups. Perhaps as a way of providing middle-ground for people from different sides of the political spectrum to come together, anarchism shares the desire for freedom which liberals/libertarians hold, and the desire for equality

which drives many socialist arguments. In *Man, Economy and State*, Murray Rothbard writes that the “purpose of a man’s act is his end; the desire to achieve this end is the man’s motive for instituting the action (1962: 1). The most crucial implication of this particular view of human action is explained by Rothbard himself: “The first truth to be discovered about human action is that it can be undertaken only by individual “actors” (1962: 2). This means that groups, the largest group in society being the state, cannot have ends, on the anarchist view. The ‘reality’ of talking about a group acting, any group, is to be seen only as a way of describing how that particular collection of individuals is acting. Now Rothbard has to do a lot of work in order to better flesh out some of the smaller nuances and implications of this view of human action, but I believe we can clearly see the link between this basic, fundamental part of his anarchist view and the view of exactly what the state ought not to do.

There are serious implications of this view for Rothbard; there are certain special conditions which become applied to human actions, specifically means and time; this is to say that each individual has certain means at her disposal for achieving her own ends, and she has to choose how a, b and c will be used, as well as how much of her time she will devote to each end (1962: 5). Furthermore, Rothbard sees great uncertainty in the future; for him, taking the opposite view i.e. that the future is determined, or indeed can be determined, fundamentally denies even the possibility of individual human actions (7). To Rothbard, knowing all of the details of the future would mean that we would never act, because our actions change the situation around us – if we know the future, we know that, regardless of our actions, things will happen in a particular manner. There are two factors which form this uncertainty about the future: the first is the unpredictability of human choices, and the second is the fact that we have limited knowledge of future natural events (7). Rothbard acknowledges that many of us do try to predict the future and to live our lives as we think things might turn out, but there is nonetheless the great possibility of human error in our decisions and actions, precisely because of our limited knowledge and the fact that people change their minds all the time, very often to our surprise.

Rothbard uses the example of a ham sandwich, specifically the desire to have a ham sandwich, illustrates the immense complexity of the modern economy. In order to produce the sandwich, the person has to know exactly what sorts of means, or goods, are at her disposal for the attainment of this goal (1962: 8). The process of making the ham sandwich is very complex and involves many different factors; to Rothbard, even a seemingly simple



process such as this has many varying goods of which we are not aware. The two crucial factors which play a part in each step of this process are labelled by Rothbard as ‘Labor’ and ‘Land.’ The labour is present at each stage to turn resources into goods, such as bread and ham, and each step of the process requires land (10). Perhaps the most important part of this whole process, or indeed any process where we want to produce something and use our time in a certain way, is what Rothbard calls the “technological idea”: how exactly one proceeds from one stage to the next requires an overarching plan, one with clear steps and a good idea of the methods and resources required to produce the desired outcome (11). Obtaining the end product is very important to the person at hand, precisely because she values it; if it was something we pick out at random for her, and not something which she has decided is the best for her to spend her time and resources on, it would be without value in her eyes; something is valuable not purely in and of itself but rather because someone, somewhere values it and is willing to give something of her own (including time) in order to have it (12). All of the factors involved in producing the ham sandwich are valuable and time-sensitive because someone wants it; as Rothbard explains, if all of the time and means were endless, things would not be truly valuable to anyone.

A large part of Rothbard’s overall argument against state interference in economic matters is the “law of marginal utility” (1962: 21). As we discussed above, certain things are valuable because there is someone who values them, and who is willing to devote her time or use her resources to obtain them. In the case of this particular law, the word ‘utility’ means ‘value.’ Exactly because somethings are more valuable to people than others, Rothbard argues that utility cannot be measured; we cannot try to plan for others how much of something they want or ought to have, and this feeds into his arguments against central planning. We can only make a judgment on things which are in high demand i.e. a particular food – five units of that food are more valuable to people than one unit of the same food. (When it comes to the quality of one particular good over another, similar good, it becomes the prerogative of the person herself to choose which one she wants (24)). Rothbard provides us with a better formulation of the law at hand: “The greater the supply of a good, the lower the marginal utility; the smaller the supply, the higher the marginal utility” (27). Rothbard views this law, as he formulates it, as a “fundamental law of economics” which for him directly results from the basic view of human action he adopts (27). It is up to the individuals who make up the free market, such as would be the case in Rothbard’s view, to determine what goods have more value than others; if the demand is high enough, the suppliers will have to adjust



accordingly; if there is more of the valued good than the supply demands, the value will eventually drop. In order for people to be able to truly determine what is valuable to them, and for the market to adjust accordingly, Rothbard argues very strongly against any form of state interference, even if that interference is said to be in the best interests' of the consumers in general. If a group such as the state does not have any legitimate ends towards which it acts, how then are we to judge any undertakings by the state? For Rothbard, the matter comes down to which particular individuals in the group are the most powerful – who is dictating the actions which the group as a whole undertakes. The 'reality' of the group acting is only derived from the actions of individuals within that group (1962: 3).

From the discussion above, we know that Rothbard does not believe that any action taken by the state can be justified – indeed, the state itself is a violation of the principle that one should not initiate force against anyone else (only in retaliation). Now the most crucial difference between a libertarian such as Nozick, and an anarchist such as Rothbard, is that the libertarian believes that some limited actions of the state can be justified, if they do not violate individual rights. On the other hand, the anarchist sees force behind every single action by the state and therefore each and every action is illegitimate. In order to properly protect individual rights, the libertarian argues that we need at least a nominal police force and objective courts of law to enforce contracts and act against aggressors; even these institutions of the state are based on using force, in the eyes of the anarchist.

In Part One of *Anarchy, State and Utopia*, Nozick pays specific attention to rebutting the claim by the anarchist that no state, not even the 'minimal' version supported by Nozick, is justified (1974: 51). As Nozick explains, the anarchist "holds that when the state monopolizes the use of force in a territory and punishes others who violate its monopoly ... and when the state provides protection for everyone by forcing some to purchase protection for others, it violates moral side-constraints on how individuals may be treated" (51). The anarchist argues that the state arises through the use of force, specifically the attempt to tax those from whom it arises; furthermore, in order to sustain itself, it has to violate certain rights of the individual – there is always coercion, or at the very least the threat of coercion, involved in how the state manages to sustain itself. Nozick does not believe that his version of the minimal state requires taxation in order to arise: "I have spoken until now of the night-watchman state's appearing to be redistributive, to leave open the possibility that nonredistributive types of reasons might be found" (27). Whilst Nozick's minimal state does indeed prohibit people

within its area of monopoly from joining other such ‘agencies’ or states, no one is forced to pay for the any services which the minimal state might render. On the other hand, the state has to use its monopoly on force to prevent people from joining others, and for the anarchist this is a clear example of the violation of individual rights. Nozick attempts to handle the anarchist’s challenge by asserting that different types of aggressors (agencies or individuals) should be punished according to the threats they pose – not each one is the same, and in some cases their rights can indeed be suppressed to the benefit of the people within the dominant protective agency. If the rights of those within the society are to be protected, the rights of others can in some cases be suspended (48, 57). On the one hand exists agencies or parties which explicitly aim to harm those under the dominant agency, or they pose a substantially legitimate threat – actions undertaken by such agencies can be stopped, through the use of force if necessary. In the middle, more difficult to discern area, are other agencies whose actions do not necessarily justify clear pre-emption but who do pose a threat to the rights of those in the agency. Finally there are agencies which are either not powerful enough or simply do not threaten the rights of the ‘agency-dwellers.’ For Nozick the grey area in the middle is more difficult to deal with, but he does argue that, when acting against the dominant agency which threatens rights, people ought to be compensated if they’re rights are infringed upon during this process.

Nozick does allow room for compensation for ‘victims’ in this situation: “Unlike exchanges in which both parties benefit and it is unclear how these benefits are to be divided, in negotiations over one party’s abstaining from an action that will or might endanger another person, all the first party need receive is full compensation” (1974: 84). If it can be adequately established that people’s rights have been infringed, but these are not necessarily ‘strong’ rights such as property, and they have been sufficiently compensated, Nozick believes the anarchist’s charge has been dealt with. He further develops his principle of compensation by stating that those “who are disadvantaged by being forbidden to do actions [i.e. those who are not allowed to act as they want to by the dominant agency, if they fall under it] that only might harm others must be compensated for these disadvantages foisted upon them in order to provide security for the others (82-3).

Whereas Nozick sees the minimal state as arising without the necessary (or rather fatal) infringement upon rights, the anarchist argues that the very establishment of any sort of agency which uses force (and has a monopoly on force) is an infringement upon individual

rights. The minimal state may arise in relatively peaceful means, but it then has to sustain itself through violence against aggressors, and use the threat of that force to dissuade people from acting against it. The rights which the anarchist claims are being infringed upon are indeed rights, but these rights of non-interference are not the same as rights such as life and property (not to Nozick). Regardless of whether there is an established agency, with the monopoly on force, the anarchist however argues against any and all such actions against non-state members, even if the purpose is to protect certain rights. Nozick, whilst arguing for no taxation, nonetheless believes that a minimal state would arise even from the sort of anarchist position which Rothbard would find ideal. A minimal state will arise because people need protection and want to be secure in their property, but the 'funds' require to maintain such a state will be voluntarily paid; indeed, the state will only arise if enough people are willing to voluntarily establish such an association. Thus given practical necessity and certain moral requirements, the minimal state will arise; it will not violate any person's right to determine what she wants to do, and therefore Nozick believes the anarchist's charge has been dealt with. Individual rights exists before the minimal state arises, and in order to properly protect such rights a state is needed. Nozick believes that his argument stands against the anarchist's, and whilst I am personally sympathetic to his view, I am not sure whether it is strong enough to withstand the anarchist's fundamental charge that even the existence of the minimal state is unjustified.

Further on in his work, Rothbard discusses the critical problem of intervention, specifically interventions by the state: "Empirically, the vast bulk of interventions are performed by States, since the State is the only organization in society legally equipped to use violence and since it is the only agency that legally derives its revenue from a compulsory levy" (1962: 877). When we focus on the effects of intervention in general, Rothbard explains that there are both direct and indirect variations of this. Intervention has the clear effects on those whom it immediately touches, but, when we are not aware of precisely every effect (and we do not have a truly free market society), some people will inevitably be negatively affected. As Rothbard explains, "when the society is free and there is no intervention, everyone will always act in the way that he believes will maximize his utility" (879).

If there is any forceful intervention in people's everyday activities, "the individual or individuals coerced would not have voluntarily done what they are now forced to do by the intervener" (1962: 880). The threat of violence which underpins the intervention, even if not

acted upon, changes the way(s) in which the person would have acted if it had not been present. Once there is violence, or a threat of violence, the person's reason i.e. the way in which he would have chosen to act and which of his resources he would have used if the threat of violence had not violated his reason. Whereas interactions within a free market are considered to be mutually beneficial to the parties involved, Rothbard argues that all of the cases involving intervention result in one person gaining  $x$  at the expense of another – force negates their abilities to truly interact to the benefit of both (880). Very interestingly, Rothbard believes that a truly free market can have “no such thing as exploitation”; this particular view stands in very stark contrast to the commonly held view that people are regularly exploited under the limited free market system which we have now (881).

Anarchists are opposed to the imposition of authority for authority's sake; to say that  $x$  is moral *because* it is what this authority figure says, is a morally defunct argument in the anarchist's eyes. Wolff makes clear that this issue arises because moral autonomy (the individual has the right and responsibility to decide on moral issues for herself) clashes with political authority (Wolff, 1970). Forcing people to act in a certain manner because the state (for example) states that it is moral violates their own reasoning on the matter. Wolff writes that “When I am commanded to do something, I may choose to comply even though I am not being threatened, because I am brought to believe that it is something which I ought to do,” by which he means that bringing force into any moral discussion removes the person's rational choice (1970).

The state can possibly act in moral ways, but the anarchist holds that the existence of the state itself is immoral because it is based on the concept of the monopoly on force, and whichever action the state undertakes will be done with the threat of force behind it – force in human interactions removes the possibility of free choices and interactions and therefore those actions cannot be considered truly moral. Anarchists are also philosophically inclined to oppose organisations based on authority or any sort of hierarchical arrangement, as all of these are instances of force being used to push free individuals one way instead of allowing them to make their own choices and act on their own. It is interesting that, while anarchism is so strongly opposed to authority and any sort of structure which includes a strong, central authority, certain anarchist strains include communitarian/communist positions. We may at first think that the anarchist shares much with those who are inclined to accept libertarian arguments, but the fundamental disagreement surrounding the existence of the state ensures

that they will remain opposed to even those who want as small a state as possible. For the purposes of our discussion the focus will be on philosophical anarchism, which limits the area of attack on the state to the area of individual rights. From this particular perspective, the state lacks any sort of moral legitimacy. The state might be tolerated for a short time insofar as true anarchism can only be achieved slowly; this implies that individuals also do not have any sort of obligation to obey the laws of the land, if these laws contradict the autonomy of the individual.

Within the umbrella of libertarian thought and writing, there are notable figures such as Murray N. Rothbard, who argue that the state (government) itself should be done away with, because it is the greatest violator of rights and that individual rights will never be secure when such a powerful entity exists; there will always be one particular group in power, which will use its political and military pull to intimidate and possibly force other groups to co-operate, regardless of their own goals (Palmer: 2010). Also, democracy is seen as a form of oppressive government because, whilst there is a process of choosing representatives through voting, the majority wins and by extension the minority has to compromise and can be abused once the majority has settled in to power (Palmer: 2010). Those who hold this position want to do away with the state all together, regardless of size and whether the state is actually acting in an efficient manner; the very basis of the state is immoral, for those of this anarchist persuasion.

The anarchist seeks the abolishing of the state as we have it today, in all its forms and permutations, but this does not mean that the anarchist *also* desires the removal of any and all constraints on immoral behaviour, and that people are punished if they do engage in such behaviour against others. Those who argue from the position of philosophical anarchism do not see the state and moral behaviour as two concepts which are necessarily linked, but which have rather been forced together through the imposition and growth of the state around the world. Whilst anarchists want the state to be dissolved, the position does not demand any and all organised defences of life and property be abandoned as well. The principle at hand specifies the anarchist's desire to maximise the freedom of each individual, not necessarily that of the criminal or those who want to pursue immoral actions but are thwarted by the systems of the state. As we have discussed before, the state enjoys the monopoly on the use of force, and the anarchist sees this embodiment of force as the embodiment of force against others, regardless of whether the situation actually merits this or not. The state is force

applied to any and all individuals and groups who are opposed to the state, or those for whom the state stands and on whose behalf it acts.

It is difficult to think through the sort of society and world which the anarchist believes would be the ideal; minimising taxation, for example, or restricting government action to the simple protection of citizens against force from an outside aggressor, seems to be a much more achievable goal. Also, punishing those who commit crimes against others within the society can be done more efficiently if that is all on which the state focuses its resources. The anarchist could accept the existence of the state if and only if the state did not compel citizens to use its services, such as policing, defence and did not meddle with other sectors such as banking, medicine, different forms of insurance and education, to name just a few. The reach of the state into all these sectors has become too strong for the anarchist to accept, as the monopoly on force is applied to all of these areas of human endeavour. The fact that the state is able to, and then does, interfere with things such as medicine and education is an immoral notion for the anarchist, because these are things which people ought to work towards solving for themselves, in a voluntary and peaceful manner. Voluntary and peaceful are the only adjectives which an anarchist would apply to 'proscribing' human behaviour; how exactly people live is up to them to figure out and apply – the anarchist never applies her own thoughts about the best way to become *x*, as she recognises that each individual has to make these decisions for himself. The anarchist does not see taxation as voluntary in any way; Rothbard writes that "Taxation is theft... It is a compulsory seizure of the property of the State's inhabitants, or subjects" (Rothbard, 1988: 273).

Ethically speaking, the anarchist aims to remove *all* force from human interactions, from actions conducted by the state, to schooling and parenting. If the state were to conduct itself in a peaceful manner, the anarchist might accept the existence of it to a very minimal degree, but the principle remains that the state embodies the monopoly on the use of force in society. As we discussed earlier, Nozick argues that the minimal state did not arise in a manner which forces people to be a part of it, but rather respects what they aim to do with their own lives. That being said, the state as it currently exists will be seen as anything but minimal by many libertarians and anarchists, and thus they might find it more difficult to accept Nozick's argument. As Wolff explains, the commands of the state will never have "binding moral force," by which he means that, whilst the anarchist can go along with some laws imposed

upon her, she will never see them as truly legitimate simply because the state has imposed them (Wolff, 1970).

### 3.1. Anarchists & libertarianism

For libertarians who are more inclined towards the anarchist side of the spectrum, the central issue with the state, with the very concept of the state is the assumption, and thereafter adoption, of the social contract; which holds that the state is indeed all of us who live in society; we need to live together and co-operate and settle disputes, and therefore we give our consent to be governed, thus we give the state its legitimacy. This is not a particularly strong position, because new generations can argue that they were never offered any sort of choice regarding their participation in society, and that they were thereby forced into it – we removed their voluntary choice. In today's globalized world, with borders becoming less clear and so too national identities, arguing from the position of social-contract theory becomes increasingly difficult to justify. It is in human nature to form groups, and thus without a state certain groups will inevitably form. The best possible anarchic situation would see everyone acting as they ought, but even though this is a philosophical position (this sort of situation will not occur in the world), one finds it difficult to wrap one's mind around it; this is not to imply that we learn moral behaviour from the state (indeed, we can often learn what not to do by observing the politicians and bureaucrats at work). As Nozick says, "What persons may or may not do to one another limits what they may do through the apparatus of the state, or do to establish such an apparatus" – this is to say that even though the state abuses its powers and tramples on individuals from time to time, its actions are of the same nature as the actions of individuals, metaphysically speaking (1974: 6). This sort of answer will probably not satisfy the fundamental worry of the anarchist, mainly that the state by its very nature violates individual rights, but if one can convince her of the metaphysical point, she might then be open to further implications. Nozick himself begins *Anarchy, State and Utopia* by positing under which conditions or situations, if any, a state would have arisen and what this tells us about the proper moral role of the state. The fundamental point is that any and all forms of government are illegitimate and immoral for the anarchist; for libertarians such as Nozick, it is only when government oversteps its legitimate limits that we ought to condemn, and possibly fight against, it.

For those who are inclined towards the left-wing side of the political spectrum, it can be very difficult to see any serious differences between different positions on the other side of the



spectrum; libertarianism, Objectivism and the like are seen as all essentially the same, as only really divided by questions of practical implementation, not necessarily ideology. For the purpose of critiquing libertarianism as a philosophical position, most of the focus in this section will be given to Objectivism.

#### 4. Objectivism

David Boaz of the Cato Institute writes that “Libertarianism is compatible with a wide variety of philosophical, ethical, and religious beliefs” (1997). Boaz believes that Objectivism is compatible with libertarianism, but that libertarianism underlies all philosophies which are pro-liberty. Quoting from his own *Libertarianism: A Primer*, Boaz says that “Libertarianism is a political philosophy, not a complete moral code. It prescribes certain minimal rules for living together in a peaceful, productive society—property, contract, and freedom—and leaves further moral teaching to civil society” (1997). Whereas the libertarian (in this case Boaz) believes that Objectivism and libertarianism can be used in conjunction, the Objectivist holds that libertarianism does not go far enough in its defence of radical individualism and free-market capitalism. Exploring Objectivism can possibly add to some areas within libertarianism, and if not it is useful to explore libertarianism from a perspective which can be considered on the same ‘side,’ but also radically different in key aspects.

From the Objectivist side Objectivism, as a distinct philosophical position, should not be grouped with libertarianism or indeed any other philosophy which purports to support liberty, precisely because those who adhere to it argue that it is radically different from all other defences of liberty and free-market capitalism. Objectivism is based on the centrality of individual values; in the *Virtue of Selfishness*, Ayn Rand writes that a ‘value’ is “that which one acts to gain and/or keep” (1964: 16). Importantly, a value is not something which exists in a vacuum; throughout her work, and here specifically, she asks “of value to *whom* and for *what*?” (16). There is a fundamental presupposition that the entity which is valuing is capable of engaging in this process, that she can decide what is best for her to value and thus what she ought to pursue, as opposed to other ends. For the Objectivist, the rational individual ought to adopt a long-term view of her life: “An *ultimate* value is that final goal or end to which all lesser goals are the means – and it sets the standard by which all lesser goals are *evaluated*. An organism’s life is its *standard of value*” (17). In order to ensure that the individual can best choose the best value for her life, the society around her has to respect individual rights. Indeed, “*individual rights are the means of subordinating society to moral law*” (108).



Capitalism is the only system which the Objectivist sees as properly respecting and protecting individual rights.

#### 4.1. Objectivism and the state

Within this philosophy, the state gains its legitimacy through its monopoly on force; it has to have this monopoly on force because, according to Objectivism, the only legitimate role of the state is the protection of the rights of the individual. For the Objectivist, the “precondition of a civilized society is the barring of physical force from social relationships ... if men wish to deal with one another, they may do so only by means of *reason*” (1964: 126). If an outside agent or state attacks a citizen, the state should act to rectify that injustice. If an agent within the society initiates force against another individual, the state should prosecute the first agent. The Objectivist argument runs that the rational happiness of the individual, that which she chooses for herself, ought to be the value around which she guides her actions – no one else can demand that she do otherwise, that she give her time or resources to someone else if she does not want to, or that she have a career which was never her passion in the first place. Whereas the libertarian and anarchist do not desire to tell people anything at all about how they *ought* to live (just that they should not initiate force against anyone else when they do act), the Objectivist does not withhold from qualitative discussions about the meaning of life and what type of actions and decisions would constitute the good life. Having the capacity to reason about the world and ourselves is what separates us from animals; an animal simply eats, sleeps, procreates etc. insofar as it is his nature, and he has no choice regarding any of these things. Humans can choose how they want to live, what they want to eat, etc., which means that our survival is not guaranteed. We have to observe the world and things around us, decide what we need from the world in order to live and live well (if we choose to live well) and then act upon what we have decided. We are able to learn from others and are the beneficiaries of many years of experience and knowledge, but as rational agents we have to choose, each day, what we are going to do and how we are going to do it. It is precisely because we have to use our minds to the best of our abilities that we have to be free; if there is any sort of outside force or compulsion to act against what we judge the best course of action to be, our one true tool of survival becomes compromised. This basic principle of Objectivism extends through basic human interactions (if you use force or compulsion against another person you are taking away her means of survival, her rationality) all the way to how Objectivists think the state ought to act – not interfering in the lives of individuals and protecting citizens from force is the true purpose of the state and its systems.

#### 4.2. Living according to Objectivism

In order for her to best live her life as she wishes, she has to be free to use her rational mind. Human beings have to choose to use their minds, as it is their ultimate tool for living thriving, happy lives. Crucially, using one's mind, recognizing the facts of reality and then acting upon them, is the exclusive choice of each individual. For Rand, reason has to be the basis of our actions because it is the faculty which "identifies and integrates the material provided by man's senses. It is a faculty that man has to exercise *by choice*" (1964: 22). As soon as some aspect, however minute, forces or coerces the mind of an individual, she is no longer free to act and live as she wishes. This is not to say that people always act in their best interests or that they choose the best course of action over all the other possibilities, but metaphysically they are free, rational agents, and they have to be allowed to act as such. This latter point is probably the most important for our discussion, because the utilitarian would argue that some actions by individuals are not in the best interest of either the people themselves or those around them, which harms the amount of happiness present in society, and therefore people have to be prohibited from undertaking any such actions; however, despite the noble intention to lessen the amount of harm done to others, the Objectivist will argue against any interference in people's free will, at least as a measure of prohibition. If harm is caused to others by the actions of an individual, that particular individual has to be held accountable and punished accordingly. When it comes to matters such as a large company acting against other smaller companies, for example, the Objectivist will only stand against actions by that large company if it gained its position by using force against anyone else, or by using political favours (a form of force), to ensure that no one could compete with it in the marketplace.

To illustrate the major between libertarianism and Objectivism, Kevin McFarlane writes that, in his critique of libertarianism, Peter Schwartz makes it clear that Objectivism is "anti-statist while libertarianism is anti-state" (1994: 1). This to say that Objectivism is not *a priori* opposed to the state, to the government; indeed, it views the state as legitimate, insofar as it acts within its moral mandate to protect the rights of individuals in the society. This also means that the size of government is not necessarily a moral problem for Objectivists – for them the focus is on the actions of the government, whether it initiates force against its own people or whether it works to maintain laws of the land and protect its citizens. Many libertarians now argue that the state itself is immoral because it grows every year, because it

increases in size both in terms of numbers and in terms of spending; the Objectivist argues that you have to examine every government action insofar as it advances or hinders personal liberty. Arguing along the Objectivist lines, the state has to retaliate with force against those who use force against the citizens (either from within or outside) (1964: 32). There are perhaps some libertarians who would go along with this argument, but they nonetheless argue that the state should be as small, and as limited in its composition and actions as possible.

#### 4.3. Objectivism and libertarianism on the state

Another serious issue of contention between libertarians and Objectivists pertains to the sphere of political philosophy, specifically the manner in which the state ought to act in conjunction with, and sometimes against, foreign states and organisations. The libertarian is fundamentally against any sort of action against other states or groups within those states, because this would violate their right to self-determination and requires the use of force; even when a clear and distinct violent act is committed, the libertarian philosophy demands restraint and the possible action (Cossaer, 2014). When a state is acting against its own citizens or there is a war raging, libertarians do not advocate that their own country becomes involved, in order to rescue the situation. If anything, limited aid can be sent, but the fundamental worry is that even this will worsen matters and, morally speaking, no state has any sort of right to become involved with the internal matters in any other state. This position can become very difficult to justify when one examines the situation preceding World War II; the dire state of people in conquered countries in Western Europe and Asia absolutely required that a country such as the United States become involved, however the libertarian would have been opposed to such an action. The position of interventionism, then, is not one endorsed by many, if any, libertarians. For Schwartz, as McFarlane explains, libertarians miss the crucial point when they roundly condemn interventions by the state; this is to say that they do not examine whether the action was done in a retaliatory or initiatory manner (1994: 1). From the perspective of Objectivism, both these can be justified, but you need more evidence that there is a legitimate threat if the state is to initiate force instead of just responding to threats.

#### 4.4. Objectivist critique of libertarianism

A particular point of interest, which libertarians argue works in their favour within their own argument, is the fact that libertarianism, insofar as it is a philosophy in favour of personal liberty and against the initiation of force (by individuals and the state), thereby encompasses

any and all moralities which support this strong opposition against force. This may include some moralities of which Objectivists do not approve, but the fundamental take-away is that libertarians and Objectivists would agree that the initiation of force, if unwarranted, is immoral, regardless of whether this is done by an individual or the state. Libertarianism does indeed not have any particular underlying philosophy because it accepts any position under its umbrella, provided that position does not involve force, a point which Schwartz attacks, but it nonetheless has some strong philosophical strands in its favour, such as the principle of non-aggression. This principle, or axiom, extends to the point where people who want to be free and responsible individuals have to respect the law and not initiate force against others; they are also free to act as they see fit and to be rewarded or suffer accordingly. Whilst libertarianism as such might not be nearly as specific as Objectivism when it comes to describing the sort of philosophical foundation necessary for a good life (in the Aristotelian sense), it does share the same aversion to the initiation of force. For an Objectivist such as Schwartz, libertarianism is an unsatisfactory position for defending such things as personal liberty and free-market capitalism because it does not have the requisite philosophical foundations – it is not a properly integrated system which one can use to explore areas as varied as personal happiness, the morality of economic systems and whether pornography should be banned. Schwartz raises the problem (a serious one, he holds) that because libertarians do not hold the necessary philosophical premises, they cannot truly believe in, and therefore convincingly argue in favour of, liberty as such (1994: 2). However, McFarlane makes the point that Objectivists themselves agree with economists such as Ludwig von Mises and Henry Hazlitt, yet they do not necessarily have the same philosophical foundations which Objectivists demand (2). McFarlane concludes by stating that, whilst he understand some, if not all, of the criticisms which Schwartz bring to bear, he wants more context to be given, so that the arguments can be properly assessed and addressed; for him, Schwartz's style leaves quite a lot to be desired (3). This does not imply that Schwartz's arguments are invalid (he accurately illustrates some of the fundamental areas in which libertarianism is lacking), but rather there might be more to libertarianism which he does not want to explore.

#### 4.5. Objectivism applied to the environment and business ethics

Nature, in and of itself, holds no value for the Objectivist. Nature is valuable because humans can use it to their ends; if they do so rationally, they will be able to use it efficiently (Thomas, 2010). Part of being rational means recognising that which exists around us and then using it to further the goodness of our lives. For an Objectivist, if a foreign company such as Shell

moves into the Karoo and damages the private property of a farmer, for example, the South African government is fully justified in acting against that agent. There is a lot of good that can come from fracking and gaining access to immense natural gas resources, but whether this action by Shell results in good consequences for one person or the entire country, the basic right to private property (and the integrity thereof) of the individual was violated and this has to be remedied. There can be no claim of the ‘greater good’ on the property and/or resources of an individual, because no such concept as the greater good exists – it is premised on the idea that something is good for a group, but a group only exists because it is comprised of individuals with their own separate, individual good. If people are to be secure in themselves and their property, no one can have any claim on them, for whichever purpose they deem is noble and good. In *Capitalism: The Unknown Ideal*, Rand explains that the “common good” is an undefined and undefinable concept... the tribe (or the public or society) is only a number of individual men. Nothing can be good for the tribe as such” (1966: 20).

Libertarianism, as a philosophical position, cannot provide a sufficiently legitimate, moral foundation for the free market because it does not offer a robust and rational form of argument for the very basis of the free market, i.e. individual rights. This particular critique comes not from those who would traditionally oppose libertarians, for example people who lean more towards the left on the political spectrum, but rather from Objectivism. Craig Biddle provides the best example of this particular discussion, in his paper ‘Libertarianism vs Capitalism’ (2013). Whereas Nozick, to take one very prominent libertarian, argued that rights are natural to people, that we have them in the state of nature and we will always have them, regardless of context or our personal feelings, Biddle points out that “Rights are nowhere to be seen or otherwise perceived. The only self-evident fact about rights is that rights are not self-evident” (13). Furthermore, “Rights are not physical existents; they are ideas – specifically, they are highly abstract principles concerning man’s proper freedom of action in a social context” (13). Finally, Biddle states that in order “To understand the nature of rights, why they exist, why they are inalienable, how we know any of this, and what these principles mean in practice, we must turn to the underlying ideas that give rise to rights and that ground them in perceptual reality” (14). Throughout the early part of his paper Biddle attempts to elucidate the following crucial point: individual rights do exist, but we cannot simply claim that and expect people to acknowledge all that follows. Establishing the

metaphysical validity of individual rights, the why of the very concept, is crucial if the free market is to be successfully defended. Libertarianism jumps over this entire process of argument and abstraction, to its detriment.

Objectivism, in order to work as a greater philosophical schema, requires that individual rights are seen as metaphysically inalienable. If, as libertarians tend to allow, other perspectives of rights and the individual are allowed into the framework of society, things begin to break down. To take just one always pertinent and useful example, utilitarianism holds that that which is good and moral is that which produces the greatest good for the greatest number of people in society. Biddle writes that if “the standard of morality is the greatest happiness for the greatest number, then the notion that an individual should be free to live his life (the right to life), according to his judgement (liberty), using the product of his effort (property), for his own purposes (the pursuit of happiness) is ridiculous” (2013: 14). For an Objectivist such as Biddle, simply introducing a notion which does not respect individual rights as much as he thinks is necessary, will corrupt the entire system. Other philosophies such as utilitarianism, altruism and egalitarianism, all of which do not recognise individual rights as absolute, have gained traction in society because there are no robust and philosophically strong counter-arguments to them, specifically from the libertarian side. This whole matter can be simplified by focusing on rights, and from where individual rights come within these different philosophies. For someone such as Biddle, who holds individual rights as absolutely crucial for a moral and thriving society, a lot of groundwork has to be done well before we arrive at this particular concept: “Far from being axioms or irreducible primaries or self-evident truths, rights are highly abstract derivative principles that arise from and depend on a moral and philosophic foundation of observations, integrations, principles, and logic” (14).

## **5. Conclusion**

This chapter explored specific challenges to libertarianism, challenges posed by positions such as utilitarianism, anarchism and Objectivism. The purpose of this chapter was to explore what each of these positions holds and thereafter what sort of problems they pose for libertarianism; specific to each contrasting position. In order to judge whether we can use libertarianism moving forward, the strongest possible case for each distinct position was presented. Anarchism, to summarise, demands the removal of the state from every aspect of life and sees no moral authority whatsoever in authority for its own sake. Utilitarianism seeks

the maximisation of the good for everyone in society and as such will allow different methods of state control and intervention into people's lives, provided these are suitably justified and produce the desired results. Objectivism recognises the role of the state and is not against state action if it falls into the roles dictated by Objectivism. Whilst libertarianism might not satisfy some of the metaphysical challenges posed by Objectivism, I believe it does offer a pragmatic area for people of these different positions in which to work together; the central strand of libertarianism, that one not use violence or fraud against anyone else, stands firm.

## Chapter 3 – Libertarianism applied to business ethics

### 1. Introduction

The final chapter of this examination into the libertarian philosophy will seek to understand at least some of the more pressing concerns within the field of business ethics. In their book *Business Ethics* (Fifth Edition), Deon Rossouw and Leon van Vuuren define business ethics as the process of considering the “implications of business on the interests of all who are affected by its activity” (2013: 5). Furthermore, this field is about “identifying and implementing standards of conduct in and for business that will ensure that the interests of its stakeholders are respected” (5). When we adopt a position in business ethics, we are entering into the discussion about what the business ought to do (the good) and how it ought to interact with those around it, whether they are actually involved in the business or form part of the larger community. In matters of ethics there are right and wrong answers, and the two writers hold that this same scenario applies to the field of business ethics. Whilst we can look toward the law for guidance in these matters, ethics very often extends much further than the law, and this has to be examined and applied if we are to judge whether the results are ethical or not. This chapter will focus exclusively on issues within the field of business ethics, why these particular matters are important, what the field has thus far managed to do with them, and finally whether libertarianism can bring anything of worth to the body of work that currently exists. The purpose of this undertaking is to apply libertarian principles to these problems with the greater goal of attempting to help us resolve at least some of the problems and to move past them. Some of the problems analysed will be things such as corporate responsibility, the relationship between a corporation and society, how a corporation ought to govern itself ethically and how a corporation can navigate the fields of affirmative action and gender equity.

### 2. Ethics & Leadership

For the writers of the book we are using as our guide, ethics is always an important dimension of the activity of any business, regardless of size or economic reach (2013: 57). The leaders of a company, such as the CEO and the board as well as those who comprise the management group, have to either acknowledge that they face different ethical challenges and have to deal with them, or they can ignore them and then face the consequences thereof. People who are inclined towards arguments such as the utilitarian type will be more inclined towards imposing legislation on corporations to act in an ethical manner, a manner which will



result in the greatest amount of good for the greatest number of people. On the other hand, the libertarian will argue that each corporation should be allowed to act as it wishes, provided it does not infringe upon the rights of any individuals while it conducts its business. Rossouw and van Vuuren make the crucial point that if these obligations are imposed on corporations by the lawmakers of the society, they become “exactly that: imposed obligations and not intrinsic moral obligations” (43). We can impose many different types of laws and obligations on corporations in an attempt to ensure that they act ethically but we then lose the value of ethical behaviour; if people are always forced to act in a certain way, the worth of their voluntary actions is lost and we can no longer discuss whether they act ethically or not.

When imposing certain ethical codes or mores, moral dilemmas can arise; specifically, such dilemmas “arise when the distinction between what is ethically right and wrong becomes blurred” (2013: 6). Our personal desires, whims and passions can get in the way of acting ethically; we might think we are acting ethically, but the opposite can turn out to be the case. Now just as individuals have to figure out what they hold to be ethically right and wrong, so too companies (which are composed of certain groups of individuals) “need to be as clear as possible on what they consider to be ethically right or acceptable behaviour. They need to be equally clear on what they consider to be ethically wrong and regard as unacceptable behaviour” (6). Furthermore, companies have to ensure that, when moral dilemmas arise, they provide adequate guidance for their employees so that they can resolve the problems for themselves and for the good of the company. If the company imposes too many rules and regulations (and especially if these are too vague to understand), the employees who want to engage in ethical behaviour will inevitably find loopholes in the particular legislation. At the same time, if the company does nothing at all to promote ethical behaviour by the employees, they might simply act as they wish and deal with the consequences afterwards. Thus I believe it is a case of balancing the two sides between regulation and free will (the libertarian will argue strongly against the regulation side of this debate) – once this balance is successfully navigated, the hope and goal is that the management and employees will think for themselves when they are faced with a difficult situation and make the ethically good decision, both for their own conscience and the ethical soundness of the company.

From the libertarian perspective on this matter, she will argue that businesses, regardless of their size, ought to be left alone by the state to do business and act as they see fit. Now the libertarian will argue that, if the company at hand has the extra resources to spend, it can

*choose* to spend that on more ethics training and further investment in the ethical talk of the company itself. However if the company is very small and perhaps just starting out, it has to use every bit of money to pay its employees and ensure that its products are of good quality, so that it can gain more customers and grow over the long-term. In either case, the libertarian holds that the companies should be allowed to act according to their best judgement. Just as the rights of the individual have to be protected in any and all situations, so too would the libertarian maintain that the rights of *this* particular company be protected insofar as its voluntary actions are concerned. If the company decides to act ethically it will be praised by the libertarian; on the other hand if it does not give  $x$  amount of its income to charity, the libertarian will not condemn the company. If the founders of the company desire to make as much wealth as possible or if they aim to invest in the local school through infrastructure improvements and the provision of scholarships, the libertarian sees both as being good, moral goals to work towards. As was made clear in Chapter 1, a libertarian such as Nozick is not concerned when company  $x$  makes more money than all the other companies around it. Inequality of income as such is not a moral problem for the libertarian, only if the income was stolen from someone else or gained by other unethical means. If you approach business ethics from the utilitarian perspective, you will argue that successful companies ought to reinvest in the community in order to ensure that a more egalitarian distribution is the result. However, adopting the view of the libertarian means that we have to observe the rights of the corporation to act freely, even if we desire that it give some profit away to community projects and the like.

### **3. Libertarian approach to business ethics**

In order to get to the specific libertarian approach to business ethics, we can use a familiar starting point within the field; the shareholder approach. This particular perspective focuses on the people who invested in the corporation to start it; they invested the requisite amount of money/resources and therefore the corporation is theirs. The primary goal of the business, from this particular view, is to maximise its profits, thereby ensuring that the investors in the business receive the highest possible return on the money and resource that they put in to start the business. Once the profits have been increased, the investors ought to decide whether they want to simply make more money or invest that in the community around the business; regardless, it remains the decision of the investors. In *Capitalism and Freedom*, Milton Friedman acknowledges that there is a “widespread acceptance that corporate officials and labor leaders have a “social responsibility” that goes beyond serving the interest of their

stockholders or their members” (1962: 112). Hereafter we will examine Milton’s view on the concept of social responsibility.

### 3.1. Milton Friedman on how a business ought to act

Milton Friedman rejects any sort of argument that companies ought to act beyond their economic, legal and ethical obligations. The company’s economic obligations are towards its investors (shareholder theory) to maximise their profit, and the legal and ethical obligations pertain to the letter of the law enacted by whichever community the company finds itself in. Matters such as corporate social responsibility (CSR) does not factor into Friedman’s view of the proper nature of a business. That being said, Friedman does not argue that a business should just act without regard for its context i.e. it should take into account what those around it think is good, ethical and fair behaviour – it is to the business’s own detriment to act otherwise. However, the maximisation of investor profit is always the central focus of Friedman’s, and shareholder theory’s, perspective. If any sort of CSR initiative, even something as simple as giving to charity, can be objectively shown to increase profits in either the short- or long-term, Friedman would be in favour of it – the increased return on profits just has to be proven to the shareholders. This then is not a view that CSR is intrinsically valuable, but rather that it has potential instrumental value to the shareholders. Taking this a step further, stakeholder theory, which has a wider view of the factors a company should take into account when it undertakes actions, will only be allowed into the discussion by Friedman if listening to stakeholders and taking their views into account results in more profits for the investors of the company. The company is seen as the property of the shareholders, and their property ought to be protected and maximised as much as possible.

In ‘The Social Responsibility of Business is to Increase its Profits,’ Milton Friedman writes that (with the caveat of this taking place in a free-enterprise system) “a corporate executive is an employee of the owners of the business” (1). Friedman does not believe any business as such is an entity which has responsibilities towards those around them; rather, the individuals of whom the business is composed have responsibilities, and for him these are mainly aimed towards the people who have invested in the business itself. When dealing with the question of ‘social interest’ or the ‘social good,’ Friedman argues that the manager has to take the money invested by some people to fulfil a purpose which they never intended to fund (2). Indeed the very reason for hiring *this* executive or manager over *that* person is that she will make the appropriate decisions to make more profit for the company. Friedman advocates

that the business make as much profit as possible and that engaging in acts towards ‘social responsibility’ are very often used to mask other actions (5). As opposed to the conformity present in the political sphere, in the free-market companies and individuals are able to freely choose they want to interact, and this is what Friedman sees as good and moral (6). For Friedman, the view that companies ought to engage in more social responsibility misses the importance, he believes, of what a free economy truly is, and why it should be something we work towards. He writes that “in such an economy, there is one and only one social responsibility of business to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud” (1962: 112). Friedman argues that people should be free to pursue their own self-interests in business, and that the rest of us have the responsibility to “establish a framework of law such that an individual in pursuing his own interest is” guided by the invisible hand, the hand which guides people’s actions so that their selfish actions result in good results for those around them (112). Friedman handles the case of corporate charity, an important aspect of social responsibility, by stating that the “corporation is an instrument of the stockholders who own it” (114). This means that, when the corporation makes such a charitable donation, it takes away the individual investor’s own ability to decide for herself what exactly she wants to do with the return on her investment. That being said, if the investors are in agreement with the board regarding the giving of a gift for a charitable cause, that is the prerogative of said investors.

### 3.2. The problem of monopolies

A pressing concern amongst those who are sceptical of the libertarian position is that of monopolies i.e. Apple, Walmart, DSTV. If regulations are too loose or indeed non-existent, one or two large companies, with immense resources and the ability to simply buy out their competitors and anyone else who might oppose them, will take over their area of the economy and possibly more. The best example of this is Walmart in the USA, but there are many other companies such as Apple and Samsung who embody these sorts of concerns in other parts of the world. The main concern here is that, if left unchecked, some companies will trample over others and the rights of individuals and groups, in their pursuit of profit. Before discussing the matter of one or two companies dominating the market, there is a deeper assumption that companies simply act with impunity, regardless of what the government or society says. A strong court system, with well-defined legislation and respect for the law in place, means that it is very difficult for companies to engage in under-handed

dealings. The government, as voted in by the people, acting with their consent and being expected to protect the rights of its citizens, has to act such that it protects those rights – this does not mean that it should act prematurely, before any wrong has been committed, but rather that it is swift and decisive in its retribution, and that the courts administer constitutional justice when the situation at hand merits such action. The only way for a company to gain some sort of under-handed advantage, provided the courts are strong, is if the company manages to pay-off a few politicians who have serious clout, such that they can bring about legislation which protects the company at hand, which in turn ensures that the company does not have to provide the best possible services and/or goods; regardless of how well or poorly it performs in the market, it is protected by the government.

Friedman, as the libertarian voice here, raises the point that, on the free market, competition will always ensure that, even if one company becomes bigger than others, those others will always be able to provide goods and services and improve, thereby increasing their profits, by providing what the consumer demands (1962: 102). Whilst there are different ways in which a monopoly can arise, Friedman believes the most difficult and problematic of these is when the company which enjoys monopoly status is backed by the government (106). Also, Friedman acknowledges that monopolies can and do arise through private collusion. Regarding the handling of such problems, specifically from the government's perspective, Friedman argues for the removal of "those measures which directly support monopoly, whether enterprise monopoly or labor monopoly ... Both should be subjected to the anti-trust laws" (111). This makes it clear that, for Friedman at least, business should be free to act as they see fit but they are nonetheless subject to the laws of the land, and should not transgress these. For the investor (the main focus of Friedman's view), he argues that tax laws should definitely be reformed, especially the removal of any corporate tax. Such a tax confuses the investor as to what she is truly earning, whether she is gaining a sufficient amount back in order to justify her initial, and continued investment (112). Friedman believes that doing so would encourage companies to truthfully declare how much they have earned and how much they have reinvested in different ventures; they would not have to hide their true income for fear of being taxed more (if their income falls in a higher tax bracket). Friedman also holds that the lessening of tax laws will result in fewer companies trying to circumvent these laws, which in turn means the money which would have been spent on dodging the law can be paid towards legitimate taxes (112). Milton Friedman is a prominent example of a libertarian who

is in favour of paying taxes, but only if they are considered reasonable and not stifling to the growth of businesses.

#### **4. The nature of the corporation**

Depending on your particular perspective on what constitutes a ‘corporation,’ you may believe that such entities ought to do more than employ people and produce services and/or goods. As Rossouw and van Vuuren write, corporations are “part of society and therefore always find themselves in relationships with the societies in which they operate” (2013: 33). Because of the huge impact corporations do and can have on the society around them, this particular argument holds that they should do as much as they possibly can do improve the lives and the environment around them; at the same time, because of their reach they can also have a negative impact on those around them, for example “exploiting employees” or harming the “natural environment” (33). The matter at hand is best understood in terms of what we judge the purpose of the corporation to be. If the corporation’s intended goal is to generate as much wealth as possible for the founding investors, then that is what the libertarian views as morally good. If the purpose of the corporation is to produce excellent products which improve the lives of all the clients, the libertarian will say that such a purpose is also morally good. Thus we can see that the libertarian’s ‘proscription’ as to how the corporation ought to act is incredibly broad; the only proviso is that the corporation not violate the rights of individuals within the corporation as well as those with whom it interacts. The libertarian position is not sufficiently robust enough to tell us what the corporation should aim towards, what its goal should be and/or whether making a lot of wealth is indeed moral or not. When opposed to other philosophies I believe this is a serious gap in the libertarian schema, one which has not been addressed in the writings of philosophers such as Nozick.

The Objectivist argues that generating wealth is a morally good goal to pursue; the application of one’s rational faculty to a problem in world can result in great wealth if one implements a successful, economically sound solution and sell it to other people. From this perspective a large corporation which moves into a small town as no obligation to build a new school or improve the roads or anything such as that – the ‘greater good’ which the corporation produces is the growth of wealth and the fact that people are being employed. The only duty which the corporation has towards the society around it is to not violate the rights of individuals around it. Furthermore, if the corporation does agree with and then give

in to the societal demand that it does more, that it has to give back to the society, the Objectivist will condemn the corporation for its actions, but will nonetheless leave it alone to act as the board deems best. Finally, the Objectivist sees the corporation as, metaphysically speaking, an entity which is made with the purpose of making wealth – if it fulfils this lawfully and morally, it ought to be praised (Rand, 1957: 387). The Objectivist offers a deeper understanding of how people ought to act (not necessarily which particular goal which they ought to pursue or how they should go about) but that it be the result of rational thinking.

#### 4.1. What the corporation ought to do

Much as people can differ on an entire range of issues because of their own, contrasting perspectives, so too some people believe that corporations should do much more than generate as much wealth as possible for the shareholders. Starkly opposed to the Objectivist view, many people discuss the notion of ‘corporate citizenship.’ Using the term ‘corporate citizenship’ denotes serious political implications; the larger the corporation is, the more is expected from it and the more it has to do for the society around it (2013: 40). Just as people have individual rights and responsibilities towards other people, corporations also have rights and responsibilities, but these can be much greater than is usually expected from individual citizens. The corporation is a citizen in its own right, one which has certain duties to fulfil towards society; these are also expected of individual citizens, duties such as “obeying laws, paying taxes, acting in the best interests of the community and participating in political processes” (40). There is an added dimension to this conversation though, specifically the fact that large corporations play the role(s) which we would usually expect the government to perform. Regardless of one’s political association, we can all acknowledge that globalisation is occurring at a faster and faster pace, and furthermore many governments of nation states in the ‘developing world’ do not fulfil what is traditionally expected from the state. The ‘income’ of governments is generated by the collection of taxes which ought to be used to serve the citizens of a particular country. However, many governments do very few of these things and seize most of the taxes for their own benefit, which means the citizens never see the actual benefit of the taxes they have paid. Because the corporation generates a much greater profit than the state, for example, (the state does not generate a profit as such but rather collects taxes) and has many other resources at its disposal, we can reasonably expect that the corporation should step into the void left by the state; this can extend even further when the situation in which the corporation finds itself is one where there are “very lax



environmental” regulations and the corporation is expected to act well on its own accord, without the threat of legal/economic penalties (41).

Rossouw and van Vuuren make it abundantly clear that corporations are both expected to act such that they do more, and give more, to the community around them, and are incredibly harshly criticised when they *do* more. If the corporation acts in areas where one would expect government action, people accuse them of abusing the power and reach they have, in order “to gain and exercise undue influence over societies in which they operate” (2013: 41). When a company acts further than we think is acceptable, how exactly can we remedy the situation? (Bearing in mind that the corporation is a citizen and has certain duties towards society at large.) We can ‘vote’ against the actions of the company by not buying its services and/or products but we do not elect the members of the board nor do we choose who becomes CEO and what she does in that capacity; however I believe the same argument can be made against the election process of one political party over another.

We do not necessarily choose the laws and bills which are made by politicians and under which we have to live and conduct our personal lives and business. As was discussed in Chapter 1, the libertarian and, to a much larger extent the anarchist, argue that the state should be in the ‘business’ of protecting the rights of individual citizens, nothing more and nothing less. In the type of democracy we have in South Africa, we elect the ruling political party every four years but we do not necessarily elect the leader of that particular party i.e. the president. We also do not elect all of the many parliamentarians who ‘represent’ us when they meet to discuss laws etc. In today’s inter-connected social media world, the market is a much more effective means to hold companies accountable than the political system is to watch over the actions of politicians and prevent corruption; indeed, the larger the company the larger the chance (not guaranteed) that they will act ethically, in their own economic interest. The larger the state, the less accountable we can hold them.

#### 4.2. The responsibilities of the corporation

Rossouw and van Vuuren acknowledge that the responsibilities which corporations have differ from society to society, but for this particular discussion the focus will be on corporations on the South African context, which is a Western/African hybrid. In South Africa, the state fails at many of the responsibilities which we would think it ought to consistently do, and many people argue that corporations ought to step into the void left by



the state, be it in the fields of healthcare, education or the provision of electricity. Many of the largest corporations in the world have ‘incomes’ i.e. GDP much greater than that of small countries and so the argument can be made that at least some of that income should be used to improve the lives of people around them, if only in the material sense (Roach, 2007: 5). In many countries, including the USA, large corporations also have serious political influence and can change the course of the country from that perspective; when a corporation has such power, we expect its leaders to act responsibly, to hold politicians accountable and to use their reach to help the government in providing basic services to the citizens. Thus far the discussion has been very abstract, but the authors aid us in this regard by defining four key areas in which we can expect and assess corporate responsibility: “the economy, the workplace, the social environment and the natural environment” (33). We will look at each of these areas, what challenges are present in each, and what libertarianism can bring to the discussion.

Concerning the matter of responsibility in the economy, Rossouw and van Vuuren provide what they believe to be the “most basic” responsibility: financial stability (2013: 33). If a corporation remains economically stable, where it employs  $x$  number of people and it grows slowly and sustainably over time to employ even more people and produce more goods and services, it fulfils its economic responsibility towards all of the stakeholders around it. Instead of creating a once-off spike in value, corporations are expected to act sustainably such as they can increase the amount of value produced over a greater period of time. Importantly, the corporation has to ensure that the shareholders receive a good return on their investment – if these shareholders are not pleased with the resources which they have invested in the corporation, they will simply withdraw and the result will be the loss of many jobs, products for the society and other positive influences on the society at large. Furthermore when a corporation is sustainable it is able to pay different taxes towards the local government which can be used to improve all sorts of other things in the lives of all the stakeholders around it (35). The corporation’s economic responsibility towards its shareholders is subsumed within the greater picture of responsibility towards the society around it.

The workplace area of corporate responsibility is intimately linked with another sphere, the social environment; we can see the social environment as the workplace made larger, moving from the micro to the macro level. When they produce products or render services, we expect

them to respect their employees such that they pay them adequately, that they provide a safe working environment and that they do not exploit the employees for their personal profit. Perhaps the most concerning area in this regard is the matter of corruption, which is present in both the public and private sectors. The scourge of corruption has resulted in great economic losses for South Africa over the past few years, and much has been done to expose those who engage in such activities. A corporation which engages in corruption turns the market in its favour without engaging in legitimate competition with other companies; whether its products or services are good enough will never be known because it has ensured that it will always make a profit, regardless of the quality of what it produces. For Van Vuuren and Rossouw, responsibility in the economy extends to the corporation making sure that it acts fairly towards smaller competition that it does not undermine them and every player in the marketplace does business on an equal playing field (35). I find it very difficult to assess the factor of ‘fair’ (fair for whom) but do agree that any corporation, regardless of size, ought not to engage in practices which actively undermine their competition.

Finally, but perhaps most importantly, we have the area of corporate responsibility towards the natural environment. Limited natural resources, pollution and the growth of human impact on the environment is a feature of modern life, and as corporations grow they use more resources than before; a company might be a large computer software provider, for example, but it also consumes resources other than internet bandwidth in its daily operations. The improvement of technology means that, in some areas, corporations are smarter regarding the amount of resources they use and they might not be using as much as before. Nonetheless corporations have to be mindful of exactly what they are using, how much they are using and whether the process can be made more sustainable. As much as corporations have the responsibility to treat all of the stakeholders around it well, so too the natural environment forms part of this equation. The corporation is intimately involved in the environment around it (whether it wishes to be or not) and ethically speaking it ought to care about the impact it has on that environment, according to the stakeholder view as advocated by Freeman. This entire relationship between the corporation and the environment around it can best be understood by the phrase ‘sustainable development,’ which will be discussed on page 63.

## **5. Corporations and individual rights**

From the libertarian perspective, as explored and explained in Chapter 1, people have individual rights, and for them to act on these rights to their full capacity, it follows that they have to be free in their choices and actions – if they make bad decisions, they will have to face the consequences thereof. As mentioned earlier on, the Objectivist argues in favour of a more robust state, which acts within its mandate and ensures that all individual rights are protected; the libertarian will be hard-pressed to give us more concrete, practical ways in which monopolies, when they are illegitimate, can be fought and dismantled in a lawful manner, but this does not necessarily take away from the validity of their philosophical points in this regard.

As easy as it sometimes is to classify people as ‘rich’ and ‘poor,’ the reality is, as is the case with most matters, much more complicated. In the world we inhabit today, people are constantly trading, using their money and goods as they best judge, and so moving up and down the economic ladder; there are certain economic classes, but people can change within these. Whilst there is still the entrenchment of wealth in certain areas, society has become much more fluid. The libertarian strongly argues against the view that individuals will always be part of a given economic class, without any sort of change whatsoever. (When the society at hand is more socialist/communist/feudal in nature, it is much more difficult for people to improve their station in life, as classes become forced and entrenched.) Most of the countries around the world now have mixed economies, with elements of free trade and state intervention mixed in; some, such as the USA, tend towards less federal control, but nonetheless the state is the largest entity around the world. For the libertarian, individuals are the best judges of their surroundings – of course their judgement can let them down, and they can and indeed do mess up a lot, but this does not preclude the removal of their economic freedom, and by extension other freedom(s). A woman who has a high-school diploma and works in the CBD of Johannesburg knows the area much better than a bureaucrat sitting in his office, drafting vague laws; she knows the people around her, the shops and services and so she can best decide on what she wants to spend the money which she earns every month. She might spend her money unwisely, but the principle stands that she has the right to do with her money as she wishes, provided of course that this does not infringe upon the free decisions and actions of other people. Instead of forcing expensive, unnecessary regulations on businesses, the libertarian argues that people will take their money and goods to places, and trade with other people and businesses, who embody their own values. If sustainability is freely adopted and supported, those businesses which best commit to and follow such a

practice will be supported by old and new customers, customers who left other businesses with whom they do not agree. If there is the freedom to choose, people will act accordingly. When the state interferes, prices become artificial and people cannot truly judge where best to spend their money; the state can of course encourage sustainable practices and set its own example, but matters become very difficult when it tries to change how people trade and act through coercion and force.

In more developed countries, with both private and public schooling, people are becoming better educated. They are able to use the internet and other resources to learn about finite and renewable resources, energy generation and the ways in which humans use natural resources to improve their lives. Those who learn about sustainability, who come to see it as an intrinsic good, are much more passionate about it, and in turn more effective agents for change than any politician could ever be. If sustainability is as important as many people believe and argue, the libertarian holds that they are free to argue for it and educate others about it; for it to be a movement of moral worth, people should be free to accept or reject it, based on their own reasoning and the arguments presented before them – if it is forced upon them, the libertarian does not see it as having moral worth.

There are many companies, whether they are big or small, that have been around for a long time. A business such as Microsoft, for example, was there at the beginning of the internet, personal computer boom and is still thriving to this day. Local businesses survived years of political upheaval and uncertainty and managed to keep on producing goods and employing people. Depending on the particular sector or industry, the management of a business know best (depending on how economically successful they are in the long run) how to ensure that the business remains sustainable. It is not enough to simply invest capital and resources if one does not know how to best utilise said capital and resources. For the libertarian, businesses are best able to grow, and indeed be sustainable from the start, if they are not burdened by unnecessary state regulations to conduct their trade as openly and freely as they can. Starting and sustaining a new business is not to be seen as a straightforward, easy process; it is fraught with all manner of difficulties and potential pitfalls, and thus it should not be seen as something to be undertaken lightly. The sustainability of a business is not confined to just the shareholders themselves, but indeed everyone who has a job there, who trades with the company and who can enjoy the products it makes; therefore there are many more players involved than one might think at first. Conducting business in an ethical manner can lead to a

better public image, more customers and so larger profits, but all of these factors are of instrumental value – if ethical conduct is not held as good in and of itself, it will inevitably be used for other purposes and in turn cannot be considered ‘ethical.’ Taking the unethical route can also result in more profits and bigger deals, as one undercuts other companies and avoids the risks involved in a more competitive market; therefore the focus in business ethics should not be, I hold, on the positive results one can attain but rather ensuring that the foundation for ethical conduct is sound.

Shareholder theory, as put forth by the economist Milton Friedman, is focused on the owners and board members of a company/business (1970). The goal of a company, from this perspective, is to make a profit for the company’s shareholders, as much of a profit as possible; there is to be no other claim on the company – to give back to the community, for example. A company is to be considered as successful if the maximum possible profit is made for the shareholders, not by how much community engagement it does or how strongly it invests in ‘green’ sources of energy. On the other hand, from the stakeholder perspective, as argued for by Edward Freeman, a company has many different stakeholders, some of whom are the traditional owners, investors and board members, and importantly others in what can be considered the ‘fringe’; people in the community, families of employees and the elderly (1984). All of these people are not ‘part’ of the company in that they don’t own shares and they have no direct interest in how the company performs, but they are affected by the dealings of the company and form the society in which the company is embedded; as such, they ought to be treated well, indeed seen as other shareholders, in a manner of speaking. A company ought to contribute to the well-being of all such people around it, whether they are direct shareholders or not – for Freeman, if the company has a strong relationship with, and supports and grows the community, it will in turn reap the benefits thereof, either through direct profits or in other intangible ways, ways which cannot be reduced to pure monetary equations. To phrase it differently, the stakeholder theory is more complex than the shareholder theory, and the value of a company is measured by many more factors, not simply the amount of profit it makes. How does the libertarian handle these two theories of business conduct? Let us consider the options at hand.

### 5.1 Shareholder vs. Stakeholder theory

The two main theories to corporate governance are shareholder and stakeholder theory. The first, espoused by Milton Friedman, places the ‘social responsibility’ on the company itself, to ensure that the investors of the company see the greatest possible return on their initial investment; there is no other concern for people who are not involved in the company, who did not start it. On the other hand, the stakeholder theory, formulated by Richard Freeman, views the company as intimately connected with the community around it, as responsible towards those for whom it works and that the concept of ‘social responsibility’ is a much more complex factor to deal with than Friedman would have believed. The term ‘stakeholder’ is wide enough to include many different groups whom one would not normally associate with the running of a business, or indeed any of responsibilities; for example, children in a local school are also seen as stakeholders, as the company can use its resources to improve the facilities or provide a scholarship for a deserving student.

Stakeholder theory is, compared to shareholder theory, much more open-ended when it comes to defining what a company is and the different role players involved. An ethics committee of a company, on this view, has to take a lot more into account when it comes to company investment and actions in the community; the shareholder approach might not even allow such a committee to take funds from the company in the first place. In ‘Dialogue: Toward Superior Stakeholder Theory,’ in the first chapter, Donna Wood writes that “Business and society research and theory – including stakeholder theorizing – has typically been focused on community, nurturance, opportunities, and avoiding harm; its finest articulations emphasize human rights, dignity, and justice, and the need for corporations to contribute to such desirable outcomes. The concept of corporate social responsibility came about as a way to express an expectation that “good citizen” companies would recognize duties to avoid stakeholder harms and to contribute to societal well-being in ways that went beyond the law” (2007: 6). We can see then that the view of the company, and what it ought to do for the community around it, is vastly more complex and intricate than shareholder theory, which focuses on maximising investor profit. Wood also writes that globalisation makes it “imperative that we all hold corporations accountable for meeting their economic goals in socially responsible and ethical ways” (7). From the stakeholder perspective, shareholder theory is insufficient for dealing with the complex problems which result from running companies in this era of globalisation, sustainability being chief among these. Wood makes it clear that, from her perspective, “Institutions do not exist to serve their own purposes, but rather to serve the needs of societies and their peoples” (6). Instead of enjoying

a sort of special status, businesses, while fulfilling certain special roles, are “never completely free to act” as exclusively independent agents; their actions effect the communities around them (6). Wood acknowledges that government actions and programs are very often inefficient, but she nonetheless holds that “government is the most effective vehicle for implementing necessary social controls in support of environmental protection, human rights, and justice” (7). A shareholder theorist such as Friedman is incredibly sceptical of any government action, but stakeholder in this case think that it is the best avenue we have to remedy immoral behaviour by businesses.

## 5.2. Stakeholder Theory as libertarian in nature

In their paper ‘Stakeholder Theory: A Libertarian Defense,’ Freeman and Philips aim to establish the idea that at the very least some parts of the broad stakeholder theory are inherently libertarian. Libertarianism, or rather any position which calls itself libertarian, is considered to be such when individual freedom is first in their order of values; nothing else, not even the desire to make a more equal society, can trump the freedom of people to act as they wish, provided they do not infringe upon the rights of others (2002: 334). A crucial part of the libertarian philosophy is that “persons are responsible for themselves. The equal liberty principle makes no sense if A may do whatever she likes to B. ... The libertarian must assume that people are capable of controlling their actions so that they do not harm others” (336). There is another, one could argue equally important, part of the libertarian position: when people infringe upon the liberties of others, they ought to be held accountable and should make some sort of restitution to the victims involved (336). For the authors of this particular article, an argument can be seen as libertarian in nature if it “(1) relies on freedom, liberty, the equal liberty principle ... (2) relies on basic negative rights ... including individual property rights; (3) allows for the creation of [voluntary] positive obligations ... e.g. contracting and promising ... (4) countenances at most a minimal state ... (5) assumes that human beings are largely responsible for the effects of their actions on others (336). Thus the first part of the piece is used to lay out the basic pillars of any libertarian position, in order to be clear on the position itself before it is applied to stakeholder theory itself.

The first part of this application focuses on the “Instrumental Thesis,” formulated by Freeman, which holds that managers should focus on strengthening stakeholder relationships, if their goal is to maximise the values for the shareholders over both short and long terms (2002: 337). This approach places the responsibility on the managers in any sort of company



setup, specifically to protect the private property of the shareholders (the business and its resources); the best way for the protection, and maximisation of profits, to occur is to ensure that the business has good, mutually beneficial relationships with the various stakeholders in the community around the business. A large part of this focus on the managers in the larger picture is to try and convince that managers have much more influence and power to guide and strengthen the purpose of the business, if there is to be a central, guiding purpose in a business: “Only by seeing stakeholder relationships subject to managerial influence could managers actually begin to do their jobs of leading the corporation toward its purpose, whatever that purpose may be (337). Furthermore, voluntarism plays a central role in this whole focus on managers, as the hope is that businesses will employ this without the need for expensive external regulations.

Strengthening their focus on voluntarism, Freeman and Philips point out that “it is because of bounded rationality and uncertainty that we cannot trust that a governmental solution will continue to be optimal, even though it might look more favorable than one that deals directly with key stakeholders. Give the state power over a particular area, and it rarely relinquishes control (2002: 337). Specifically because personal responsibility is crucial to the libertarian’s own view of the individual, and how individuals ought to act towards each other, the writers repeat that this process has to be voluntary (337-338). Thus far they have dealt with the “Instrumental Thesis” part of stakeholder theory; now they move on to the “Normative Thesis” (338).

The “Normative Thesis” states that: “Managers out to pay attention to key stakeholder relationships” (2002: 338). The writers offer a number of defences in favour of this thesis, the first of which “argues that in fact we do live in a world of property rights” (338). Initially this thesis has the same sort of formulation as the “Instrumental Thesis,” as property rights are seen as “fairly basic” i.e. something which most libertarians would agree is necessary for any formulation as to how people should act (338). The shareholders, being the investors who started the company in the first instance, are to be considered as the ‘owners’ of the company itself, and the manager should ensure that their property is protected and maximised. This sort of argument could be interpreted, according to the writers, as giving stakeholders a say in this formulation as well; each different stakeholder group also has property rights at play. For example, “Consumers have the property right to their wealth. ... Communities have a property right to public goods” (338). If these property rights are to be properly respected, the managers of the company have to adopt a larger view of the role their company plays in the



community at large. The particular thesis at hand can also be supported by the notion of voluntary actions; these actions are undertaken by all of the various stakeholders in the community, and it is by their voluntary interactions that the company arises in the first place; “the firm is a nexus of contracts or the centerpiece of an ongoing multilateral agreement, based on voluntary consent. As indicated above, libertarian theory is not antithetical to the notion of positive obligations among actors” (338). Specifically because voluntary actions exist, and we use them on a daily basis when we interact with others, the ‘duty’ to protect property rights such as those above only exists insofar as voluntary actions are acknowledged and respected. There is an ongoing agreement between the various stakeholders and the company (manager), that all the property rights at play will be respected by everyone.

Freeman and Philips indicate that, in a previous series of papers, Freeman and Evan aimed to make clear that the type of argument made above can be encouraged without the influence of the state to enforce ‘voluntary’ cooperation. “Evan and Freeman stipulated (by tacit appeal to libertarian background conditions) that the agreements which came out of the veil must work in any set of conditions, and could not depend on particular kinds of state regimes” (2002: 339). Furthermore, the assumption is that, if Evan and Freeman were to provide more explicit detail as to what exactly the stakeholders in this formulation would agree to, they would all agree to the five ‘libertarian requirements we discussed earlier. For Freeman and Philips, they see the stakeholders in the picture as libertarians.

The writers of this piece we are investigating see the stakeholder theory as managerial; they have examined the instrumental and normative theses, and have come to the conclusion that stakeholder theory is ultimately managerial because it “recommends courses of action for managers and deals at once with normative, instrumental, and descriptive claims” (2002: 339). Quoting the work in 1995 of Donaldson and Preston in this regard, the writers attempt to establish that the stakeholder theory, whilst managerial in the broader sense, provides strong links with the instrumental and normative theses: “It [stakeholder theory] does not simply describe existing situations or predict cause-effect relationships; it also recommends attitudes, structures, and practices that, taken together, constitute stakeholder management. ... Stakeholder theory does not necessarily presume that managers are the only rightful locus of corporate control and governance” (339). For the writers, viewing stakeholder theory as managerial “is to see it as intimately connected with the practice of business” and that “stakeholder theory is about business and capitalism” (340). They believe that focusing in on

this particular part of stakeholder theory will add the strongest support to their argument that stakeholder theory has strong libertarian roots.

Valuation creation and trade are what business is about, to the authors at hand (2002: 341). Whereas some would claim that libertarians argue the state has “no impact on value creation and trade” the actual point is that the state does not need to have an impact in this regard (341). It is a simple, but necessary, observation that “as trade becomes increasingly global in scope, the regulatory power of any single government is diminished” (341). Business, and by extension the drive to create and trade, to maximise one’s values, is the very human desire to create. Also, and not contradicting the previous point in the eyes of the writers, “the desire for solidarity fuels capitalism, the desire to come together and build something which no single person can accomplish” (341). Of course libertarians (and managers) can ignore this complexity of human interactions, but the writers own point at the end of this particular part is very strong and worth keeping: “Regardless of the purpose of the firm, since managers are boundedly rational, and since the world is uncertain, they must pay attention to the consequences of their actions on others. To ignore these others is to put oneself and one’s company beyond the pale of morality and ethics” (340).

Progressing their paper, the authors formulate the “Principle of Stakeholder Cooperation” which states that “value is created because stakeholders can jointly satisfy their needs and desires by making voluntary agreements with each other” (2002: 341). As is made clear, trade is not a “zero-sum game”; the view of capitalism here is not that of the survival of the fittest or some always exploiting others – we find a view that views trade as mutually beneficial (341). This principle encourages and reinforces positive behaviour between different actors in groups, instead of seeking to apply punitive measures which end up costing more than the good they actually produce. All through this principle is the focus, even though it includes groups, on voluntary action as the “well-spring of capitalism” (341). Hereafter there is a short discussion on the “Principle of Stakeholder Responsibility,” which focuses in on the crucial (for any libertarian) aspect of personal responsibility, and in this context the focus shifts exclusively to ensuring that one acts responsibly towards others with whom one has agreements, as well as repaying when one has caused any harm (342). The third principle which authors provide centres on the complexity of human nature and interactions; it claims that “human beings are complex psychological creatures capable of acting from many different values and different points of view” (343). This principle is included because the authors want to shift some of the negative views of capitalism towards something more

positive i.e. capitalism works because people are complex and often shift their values and pursue others, for various reasons. The final two principles are focused on business; these are the principles of “Continuous Creation and Emergent Competition” (344). If businesses, which are good, are to create more value for more people, they have to be part of a stable environment and have to be free to interact with the different stakeholders to the benefit of everyone involved.

### 5.2.1. Assessing Freeman and Philips

This particular article shifted my views on what stakeholder theory could mean. As is the case with much of this debate, I had considered the shareholder view to be more in line with what I initially considered good in this context, but the stakeholder view appears now more nuanced and useful moving forward. It might be more difficult for companies to keep track of all the different agents with whom they have to interact in a community, but globalisation in particular necessitates that responsible management simply has to be the norm. Stakeholder theory does not contradict libertarian principles, not insofar as Freeman and Philips explain them, and can indeed be strengthened by linking them through the sorts of principles which the authors provide. A more considered libertarianism might help the philosophy as a whole gain more traction in this field. From using this article and contrasting the shareholder theory with stakeholder theory from a libertarian perspective, I believe that the libertarian would be better suited to adopt this version of stakeholder theory. Libertarianism allows for more room of interpretation than Objectivism, for example, and as a philosophy it can accommodate what stakeholder theory can add. Stakeholder theory uses some of the central tenets of libertarianism, such as individual responsibility and property rights, to strengthen libertarianism and bring it into more relevance concerning business ethics questions. Stakeholder theory, as presented here, makes a strong case for libertarianism, but I believe that libertarianism can accommodate both shareholder and stakeholder theory. Indeed, one could argue that stakeholder theory already has elements of shareholder theory built-in, especially when it is based on libertarian ideals as discussed here.

## 6. Corporate governance

We now come to the matter of corporate governance, how a corporation ought to conduct its ethics programs and what we can take from the libertarian view on this particular matter. If the corporation at hand does not adopt the particular ethical codes and accept the regulations

which society deems appropriate, what is the best course of action for people and the state to pursue?

In Chapter 16 of *Business Ethics*, the writers make clear that corporate governance has featured prominently in South African businesses for the past 20 years. The King reports are the best example of the efforts which have been made to bridge the gap between formal and informal ethics; the first of these reports was published in 1994, and the third report was released as recently as 2009. Because the libertarian focuses on the individual actions of each corporation on its own, I believe that he will be in agreement with much of what the third King report advises companies do; this particular report “focuses on the internal level of corporate governance.” (2013: 216). As was mentioned earlier on, truly ethical decisions and actions can only take place if people are free to act; their actions may turn out to be unethical but they have to undertake the actions to be held responsible. Adopting this particular philosophical perspective, it extends to the actions of corporate actors – they must also be free to act if we are to be able to hold them accountable, at least ethically speaking. King report III does recognise the “importance of corporate governance at the regulatory level” it does not adopt the strong-handed approach of many regulators and politicians (216). Ethics happens when the board and/or management have to make a difficult decision, when they have to *choose* to act in an ethical manner; the focus shifts from imposing regulations and penalties to the “discretionary realm within companies where boards of directors can decide on how a company should be directed and controlled.” (216) Many of us might perhaps be inclined towards a more heavy-handed approach from the state to ensure that corporations never act unethically in the first place, but this removes the agency of those corporations from the picture and corporations can then act ethically in name only, not in nature.

### 6.1. How to best measure and implement an ethical corporate culture

The vital distinction between the “voluntary” and “mandatory” approaches is a foundational part of the third King report. The report is based on the view that companies adopt good ethical practices and then implement these in their day-to-day conduct, and that if they deem it necessary and/or appropriate not to adopt these particular practices, they ought to then justify *why* they have not done so. Whilst the libertarian would agree with King III up to this point, it also favours the stakeholder over shareholder approach, whereas the libertarian would argue in favour of the shareholder approach. However I believe the libertarian will accept either approach depending on the situation and the way in which the corporation conducts itself. Furthermore, despite the fact that the shareholder vs. stakeholder debate has

occupied much time and many words within the field of business ethics, the King report advocates that both shareholder and stakeholder interests are equally important – the two do not have to be diametrically opposed and many new businesses will have to integrate both perspectives into how they do business.

From an organisational standpoint there are four key areas which a corporation has to strengthen if it is to conduct itself ethically; these are Leadership commitment, Governance structures, Ethics management process and finally Independent assessment and external reporting (222-3). If we are to truly manage ethics, or at the very least the implementation thereof, the corporation has to act properly within each of these fields and as an overall strategy. Whilst each sphere is important in its own right and as individual parts of an integrated whole, if I were arguing from a libertarian perspective I would appeal to the ‘Leadership commitment’ area of the four, making it clear to the CEO, board and management that it is in their own interest to ensure their business is conducted in an ethical manner, that they are pro-active in their approach and consistent in how they act. Each corporation has its own types of leadership systems and indeed leaders are not necessarily people who sit on the board; leaders in an organisation can be anyone who is part of management. The crucial point that the leadership group shares a common vision for what they want the company to be and how they want to get there i.e. how they want everyone within the corporation to act. As much as we want the appropriate ethical structures to be in place, there is also the serious requirement for effective ethical role models to be present throughout the corporation. The role models, when they are in positions of senior management, have the power to determine “the extent to which ethical behaviour will be modelled.” Thus the CEO, in particular, is “therefore in the best position to influence corporate ethical behaviour.” (226). It simply will not do for the CEO and board members to draft different types of ethical regulations and rules, to expect that everyone in the company follows those rules and penalises them if they break those rules, but then they break those very same rules. The result will be the flouting of the ethical rules by other people in the corporation, the end result of which will be losses to the integrity of the corporation and a hit to the profit margin. While the CEO is a very important symbol for ethics in a corporation, she can only be as effective as the structures around her, and she *has* to be supported by those around her. The libertarian would hold that it is the responsibility of the CEO and board to ensure that the corporation acts ethically in all that it does.

## 7. Conclusion

The purpose of this third chapter was to apply libertarian principles to different areas within the applied field of business ethics. We examined different approaches to corporate governance, what exactly corporate governance entails and what the libertarian adds to this discussion: mainly that as long as the rights of particular companies aren't infringed upon, the state can make certain laws. Furthermore, it is the prerogative of the particular company to decide how much (if any) social responsibility they wish to fulfil. It is definitely in their benefit to do so, but the libertarian does not see anything morally wrong with the company if they don't do this.

## Conclusion

At the start of this paper I stated that the purpose was to investigate the libertarian position as firstly a philosophical framework and secondly as a perspective from which to analyse some of the problems which we encounter in the business ethics sphere.

Chapter 1 was focused on Robert Nozick's *Anarchy, State and Utopia*, as this is probably the best resource we have for examining libertarianism within academic writing. A close reading of the text was provided along with commentary from other academics and philosophers on what Nozick has to say in favour of his chosen philosophical position. While there are some serious problems with the libertarian's position (especially if one is inclined to agree with arguments which hold that more has to be done to resolve problems such as wealth inequality and corrupt actions by companies), I believe it survives the charges against it. At the same

time libertarianism can be strengthened especially regarding what type of economic system it favours and how it handles the difficulties of restricting government action.

Chapter 2 served as an overall critique of philosophical libertarianism, by way of different positions, specifically utilitarianism, anarchism and Objectivism. The purpose of this chapter was to scrutinise and critique the weaknesses of libertarianism, as understood by those who argue from these other philosophical perspectives. In closely examining Nozick's libertarianism in Chapter 1 I aimed to provide the strongest possible argument in favour of the position; in Chapter 2 we encountered the strongest possible arguments against libertarianism.

Chapter 3 saw the libertarian philosophy applied to different problems within the field of business ethics. This area has seen great growth over the last few years as a number of big corporations have experienced ethics scandals, and at the same time corporations are expected to fulfil some of the roles we would traditionally associate with the state (e.g. the electricity crisis in South Africa). While libertarianism has its problems I believe it brings good points of consideration to these problems, especially as corporations are doing more and more and we have to be able to navigate how they ought to act. Regarding pressing environmental issues such as fracking, the state ought to lead because of the important resource i.e. water which is a factor, but fracking can help to alleviate the energy problems in South Africa and in turn allow more people to be economically well-off.

As libertarianism is a growing school of thought it is a very fruitful exercise to examine the philosophy on its own, and to apply at least some of its premises to a field as important as business ethics. Despite the view that businesses ought to remain as free as possible to act as they see fit (the libertarian view), it is becoming more and more crucial that they engage in at least some aspect of social engagement. I agree with the libertarian that businesses should be left alone as much as possible but that they should nonetheless be encouraged to broaden their own philosophies. Instead of a strongly imposed, top-down approach by the state, people should put pressure on companies to act ethically, and use the tools at their disposal to ensure that unethical practices are exposed and discouraged. This thesis has been an in-depth analysis of libertarianism as a distinctive philosophy and we now have a comprehensive view of its unique premises and conclusions. Libertarianism is such that it can accommodate many



seemingly opposing views and use the best of these to promote peaceful, rational interactions between people.

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